



# FEDERAL REGISTER

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Vol. 81                      Monday,  
No. 147                     August 1, 2016

Pages 50283–50604

OFFICE OF THE FEDERAL REGISTER



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Federal Register

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 996

[Doc. No. AMS-FV-15-0066; FV16-996-1 FR]

#### Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States; Change to the Quality and Handling Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Peanut Standards Board (Board) to revise the minimum quality and handling standards for domestic and imported peanuts marketed in the United States (Standards). The Board advises the Secretary of Agriculture regarding potential changes to the Standards and is comprised of producers and industry representatives. This rule revises the minimum quality, positive lot identification, and reporting and recordkeeping requirements under the Standards. It also makes numerous other changes to better reflect current industry practices and revises outdated language. The Board believes these changes will make additional peanuts available for sale, help increase efficiencies, and reduce costs to the industry.

**DATES:** Effective August 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Steven W. Kauffman, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: [Steven.Kauffman@ams.usda.gov](mailto:Steven.Kauffman@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under the Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States (Standards), as amended (7 CFR part 996), as established pursuant to Public Law 107-171, the Farm Security and Rural Investment Act of 2002 (Act). The Standards regulate the quality and handling of domestic and imported peanuts marketed in the United States.

#### Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a “non-significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

#### Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect and shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same

subjects as this Act; but is intended that all such statutes shall remain in full force and effect except in so far as they are inconsistent herewith or repugnant hereto (7 U.S.C. 587).

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Act requires that USDA take several actions with regard to peanuts marketed in the United States. These include ensuring mandatory inspection on all peanuts marketed in the United States; developing and implementing peanut quality and handling requirements; establishing the Board comprised of producers and industry representatives to advise USDA regarding the quality and handling requirements under the Standards; and modifying those quality and handling requirements when needed. USDA is required by the Act to consult with the Board prior to making any changes to the Standards.

Pursuant to the Act, USDA has consulted with Board members in its review of the changes to the Standards included in this final rule. This final rule implements the revisions to the minimum quality, positive lot identification, and reporting and recordkeeping requirements under the Standards. This final rule also makes numerous other changes to the Standards to better reflect current industry practices and to revise outdated language. The Board believes these changes will make additional peanuts available for sale, increase efficiencies, and reduce industry costs. These changes were recommended by the Board at its meetings on June 24, 2015, and November 18, 2015.

The Standards establish minimum incoming and outgoing quality requirements for domestic and imported peanuts marketed in the United States. Mandatory inspection is required to ensure that the quality regulations are met. The Standards also require an identification process so peanuts can be identified and tracked during processing and disposition. Finally, the Standards specify reporting and recordkeeping requirements for handlers and importers.

Sections 996.30 and 996.31 of the Standards outline the incoming and outgoing quality standards, respectively, for peanuts. The incoming standards



currently prescribe specific requirements for segregation, moisture content, and foreign material (stones, dirt, sticks, etc.). The outgoing standards include specific requirements for damage, foreign material, and moisture for both shelled and inshell peanuts. The outgoing standards also require peanuts to be positive lot identified and tested and certified as negative for aflatoxin. Both the incoming and outgoing standards require inspection and certification by the Federal-State Inspection Service.

Section 996.15 establishes a definition for positive lot identification (PLI). Section 996.31 requires PLI on all peanuts designated for human consumption as part of the outgoing standards. Section 996.40 establishes handling standards for peanuts and includes specifics on how PLI will be used throughout the handling process, from initial identification through the sampling and testing process. Section 996.50 outlines the process for reconditioning failing lots and establishes PLI requirements to track and identify the peanuts throughout the reconditioning process. Section 996.74 outlines the compliance requirements for the Standards and includes penalties for failing to maintain proper PLI.

Sections 996.71 and 996.73 establish the reporting and recordkeeping requirements under the Standards. These sections specify, in part, the reports required and establish what records need to be maintained and for how long.

The Standards were last revised in 2005. In 2014, the American Peanut Shellers Association (APSA) started a review of the current Standards and developed a proposal to revise the Standards to reflect changes in the industry and to make other changes to bring the Standards up to date. These recommended revisions were shared with USDA and industry representatives and were then presented to the Board at its meeting on June 24, 2015. The Board voted to approve the recommendations from APSA in their entirety. In addition, a subcommittee was created to work with USDA to review and recommend any additional conforming changes to the Standards necessary to facilitate the revisions requested by the industry. At a meeting on November 18, 2015, the Board reviewed the modifications and conforming changes from the subcommittee and USDA, and approved them unanimously. Consequently, this final rule makes the following recommended changes.

This final rule revises the minimum quality requirements under both the incoming and outgoing standards. The

industry originally thought the presence of foreign material in incoming peanuts could promote the growth of aflatoxin. Therefore, a limit on the amount of foreign material in incoming peanuts was established. However, the industry no longer believes there to be a correlation between foreign material and aflatoxin. In addition, due to advances in technology, foreign material is easily removed from incoming peanuts, and handlers are able to remove foreign material from incoming peanuts to a level that is lower than the limit currently specified in the incoming standards. Further, most handlers are setting their own tolerances for the presence of foreign material. Eliminating the maximum amount of foreign material that incoming farmers stock peanuts may contain from the Standards provides additional flexibility by allowing individual handlers to determine the amount of foreign material they are willing to accept. As such, this action removes the current limit of 10.49 percent on the amount of foreign material that incoming farmers stock peanuts may contain.

The outgoing quality standards currently include a table that outlines, in part, requirements for damage, minor defects, foreign material, and moisture. Two of the columns of the table deal with damage and defects. The first of these columns provides the allowance for damage to unshelled peanuts and kernels, and the second column provides the allowance for minor defects. Currently the allowance for major damage is 1.5 percent for lots excluding splits and 2 percent for lots of splits. The current allowance for minor defects is 2.5 percent, except for No. 2 Virginia peanuts, for which the allowance for minor defects is 3 percent.

Under the proposal from APSA, the two columns on damage will be merged into one column and will set one overall allowance for damage on unshelled peanuts, cleaned-inshell peanuts, and kernels at 3.5 percent. Over the years, the industry has found that growing practices such as no till farming and modern harvesting practices have increased the amount of damage to individual kernels. In addition, the shift to new peanut varieties that produce larger kernels has impacted the sampling of peanuts for damage. The larger kernels reduce the number of peanuts in the sample such that damaged kernels have a larger impact on the percentage of damage in the sample size. Increasing the allowable damage will allow additional peanuts to meet the Standards and be shipped for human consumption. In addition, relaxing the damage allowance will

allow more lots of peanuts to move without being remilled, helping to reduce handling costs.

Peanuts are also used for many different products, including outlets where cosmetic damage is not as important, such as peanut butter, where the manufacturers are willing to purchase lots with a higher percentage of damage. Most manufacturers are setting their own tolerance levels for damage based on the products they manufacture. By increasing the amount of allowable damage, more peanuts will be available to be manufactured for human consumption, helping to maximize shipments and improving returns. Therefore, this final rule relaxes the allowance for damage and defects to 3.5 percent for all unshelled peanuts, kernels, and for cleaned-inshell peanuts.

This rule will also make changes to the PLI requirements and the recordkeeping and reporting requirements under the Standards. In the Standards, the PLI requirements are used to help maintain the identity of peanuts throughout the handling process, thus maintaining the integrity of lots being shipped to human consumption outlets, lots that are subject to the reconditioning process, and lots that are disposed of in non-human consumption outlets. PLI also helps ensure that peanuts certified for human consumption meet the outgoing standards for grade and aflatoxin. In addition, the PLI requirements are a useful tool in product traceability and helping to ensure compliance with the Standards.

The reporting and recordkeeping requirements also play a role in ensuring compliance. Handlers and importers are required to maintain all relevant documentation on the disposition of inedible peanuts. The documentation maintained must be sufficient to document and substantiate the proper disposition of all peanut lots that do not meet grade or aflatoxin quality standards. Reports and records are used to track and document the disposition of peanuts and to substantiate handler and importer compliance with the Standards.

In 2009, the peanut industry began the process of completely restructuring its tracking and reporting systems under an industry-wide food safety system, utilizing industry experts as well as guidance from the Food and Drug Administration, the Grocery Manufacturers Association, and finished product manufacturers. The industry also decided to work toward meeting the Global Food Safety Initiative (GFSI) standards that were being mandated by many major food manufacturers. GFSI

certification requires, in part, that a company shall be able to trace all raw material product lots, including packaging, from its suppliers through all stages of processing and dispatch to its customers. The industry reports that in 2010, the industry had its first audits performed against the GFSI standards, and many in the industry are now certified under a GFSI scheme.

The purpose of this effort was to reduce the need for multiple audits while providing ongoing assurance of compliance within the industry with food safety initiatives. Under these new industry procedures, all raw peanuts are lot coded, and there is a traceability system in place to track them throughout the handling process. Handlers currently trace all peanuts from the warehouse to final disposition, including edible, blanched, and oil stock. Further, lots are segregated throughout the handling process in order to maintain identity should there be a recall notice issued.

In reviewing the Standards, the APSA thought it is important to maintain PLI on all lots meeting outgoing requirements. This preserves the integrity of these lots and provides assurance to buyers that the peanuts have met all requirements, have not been commingled with lower grade peanuts, and are ready to be utilized for human consumption. In addition, all peanut manufacturers require the official grade and aflatoxin certificate before taking possession of the peanuts to confirm that the analytical and physical tests required by law have been conducted.

However, given the industry's new requirements for tracking and traceability, the APSA found the remaining PLI requirements in the Standards to be redundant and no longer necessary. When the Standards were implemented in 2002, the current industry traceability systems had not yet been developed, and PLI was an important tool in maintaining compliance. The new traceability systems are used by the industry to help maintain the identity of peanuts throughout the handling process, the same way PLI is used. These systems are also used to track peanuts that are to be reconditioned or disposed of in non-human consumption outlets, such as for seed or animal feed. The industry reports that each peanut handler has designed a traceability system that is specifically integrated into their operations, and the industry believes that these systems largely perform all the same functions as PLI. Further, these systems were also designed to meet the new demands under food safety

requirements, such as the Food Safety and Modernization Act, and the food safety and handling requirements set by the manufacturers. The industry believes having to utilize PLI in addition to its own tracking systems requires additional time and recordkeeping to follow peanuts that already have documented traceability.

The APSA proposal, as approved by the Board, recommends revision to the Standards to reflect current industry traceability programs. The industry believes that these changes will reduce handling and inspection costs and help improve the efficiency of handling operations. Consequently, this final rule will add language to § 996.73 of the Standards to define the necessary requirements for an industry-based traceability system and will provide allowances for systems meeting these requirements to be used in place of PLI prior to inspection and certification. The existing PLI system will also remain in place as a requirement for any handler who does not have a system in place that meets the requirements for an industry-based traceability system and for any handler who uses PLI in conjunction with their own traceability system. However, PLI will still continue to be required for all peanuts meeting the outgoing standards.

This final rule will also revise the reporting and recordkeeping requirements under the Standards. All handlers and importers are currently required to submit to USDA a monthly report documenting their monthly farmers stock acquisitions. Under these changes, the requirement to submit this monthly report will be eliminated. The industry stated that the information contained within the form was already being submitted to USDA on a daily basis as part of the farmers stock inspection process. Further, industry representatives stated that this data is maintained as part of the traceability systems now in place. Therefore, the industry supported the removal of this requirement.

Additional changes were recommended to recognize the reporting and recordkeeping done by the industry to meet the tracking and traceability requirements now required of the industry for food safety initiatives. In addition to records relating to peanuts meeting the outgoing standards, handlers and importers are required to maintain all relevant documentation on the disposition of inedible peanuts as part of their food safety traceability requirements. Given the traceability and recordkeeping requirements recommended to be added to the Standards and the recordkeeping

requirements demanded under food safety requirements, the industry questioned the continued need for USDA to have access to all such records under the Standards. Industry representatives stated that they no longer see the need for USDA to require regular access to records other than those pertaining to peanuts meeting the outgoing requirements. Consequently, pursuant to the Board-approved recommendation, this final rule will modify the reporting requirements to specify that USDA will be permitted to inspect any peanuts meeting outgoing standards and any and all records pertaining to peanuts meeting outgoing quality regulations. However, pursuant to the Act, the Secretary shall work to provide adequate safeguards regarding all quality concerns related to peanuts. Therefore, this change will not preclude USDA from having access to all materials and records necessary should there be a situation necessitating an investigation or review to ensure compliance. The documentation maintained must still be sufficient to document and substantiate the proper disposition of all peanuts failing grade or aflatoxin quality standards.

Additionally, USDA would like to clarify that under this modified reporting requirement, USDA will continue to have access to all materials and records regarding any and all peanuts originally intended for human consumption. This applies whether the peanuts meet outgoing quality requirements or not.

The APSA proposal as approved by the Board also recommended revising the Standards to clarify that handlers and importers are not producing a finished product and that the peanuts require further processing prior to human consumption. This includes amending the definition for peanuts in the Standards to indicate that the peanuts covered under the Standards are raw peanuts and intended for further processing by manufacturers prior to human consumption. The definitions for inshell and shelled peanuts will also be revised to reflect that the peanuts covered by the Standards are in their raw, natural state. The definition of peanuts will continue to provide that green peanuts, which are raw, for consumption as boiled peanuts are not subject to regulation under the Standards. However, these green peanuts are sold mostly by producers, not by handlers and importers, and make up a small share of the peanut market. The change to the definition for peanuts will also state that peanuts intended for wildlife are not subject to regulation under the Standards.

This change will also eliminate all references to roasting in the Standards to further clarify that handlers and importers are not producing a finished product. At one time, roasting was used to reduce levels of aflatoxin and was included in the Standards for that purpose. However, roasting is no longer used to treat aflatoxin. The Board supported these changes to reduce any confusion that handlers and importers under the Standards are delivering a finished product ready for human consumption.

Finally, this final rule will also make numerous other changes throughout the Standards to update language and to reflect current industry practices and changes. Such changes include a change to the crop year, eliminating language relating to the old quota system, and updating outdated information, such as incorrect addresses, titles, and other contact information. It will also remove the requirement that peanuts testing at or above 301 ppb of aflatoxin can only be disposed of through crushing or export, as cleaning technology has improved to the point that peanuts testing at or above this level may possibly be cleaned to meet the outgoing standards.

The proposed changes approved by the Board also included a recommendation to remove the lot size limit of 200,000 pounds on peanuts presented for outgoing inspection. However, the 200,000 pound limit is required by USDA and the inspection service to ensure an accurate sampling protocol. Therefore, the 200,000 pound lot limit will be maintained.

USDA is also adding an additional change under this final rule that will revise the requirements for imported peanuts under § 996.60(a). This change modifies how importers submit their entry information to USDA. This section currently references the “stamp and fax” entry process, which is being replaced by the International Trade Data System, a system that will automate the filing of import and export information. This change will revise this section to reflect the new electronic entry process.

The Board believes these changes will bring the Standards closer in line with current industry practices, make additional peanuts available for sale, help reduce costs, and make operations more efficient. These changes are consistent with the Standards and the Act.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has

considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms, including handlers and importers, are defined as those having annual receipts of less than \$7,500,000 (13 CFR 121.201).

There are approximately 7,500 peanut producers; 65 peanut handlers, operating approximately 70 shelling plants; and 25 importers subject to regulation under this peanut program.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition can be obtained from the 2012 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 3,066 peanut farms with annual agricultural sales valued at less than \$500,000 in 2012, representing 47 percent of the total number of peanut farms in the U.S. (6,561). According to the National Agricultural Statistics Service (NASS), peanut production for the 2014 and 2015 crop years averaged 5.756 billion pounds. The average value of production for the two-year period was \$1.088 billion. The average grower price over the two-year period was \$0.25 per pound. Dividing the two-year average production value of \$1.088 billion by the approximate number of peanut producers (7,500) results in an average revenue per producer of approximately \$145,000, which is well below the SBA threshold for small producers. Based on information and reports received by USDA, more than 50 percent of handlers may be considered small entities. Further, the estimated value of peanuts imported into the United States in 2014 was approximately \$64 million. Based on that number, the majority of importers would meet the SBA definition for small agricultural service firms. Consequently, a majority of handlers, importers and producers may be classified as small entities.

The current 10 custom blanchers, 4 custom remillers, 3 oil mill operators, and 1 USDA and 17 USDA-approved private chemical (aflatoxin) laboratories are subject to this rule to the extent that they must comply with reconditioning provisions under § 996.50 and reporting

and recordkeeping requirements under § 996.71. These requirements are applied uniformly to these entities, whether large or small.

This final rule will revise the minimum quality, positive lot identification, and reporting and recordkeeping requirements under the Standards. This action will also make numerous other changes to the Standards to better reflect current industry practices and to revise outdated language. The Board believes these changes will make additional peanuts available for sale, help increase efficiencies, and reduce costs to the industry.

This final rule is issued under the Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States, as amended (7 CFR part 996), as established pursuant to Public Law 107–171, the Farm Security and Rural Investment Act of 2002.

It is not anticipated that this action will impose additional costs on handlers, producers, or importers, regardless of size. Rather, these changes should help the industry reduce costs by helping to increase efficiencies. The industry believes the requirement that they continue to use PLI in addition to its own internal traceability systems creates redundancy and additional costs. By recognizing its internal traceability programs as an alternative to PLI, this should improve efficiencies and reduce costs. In addition, this action should also make additional peanuts available for sale, helping to maximize shipments and improving industry returns.

This final rule is expected to benefit the industry. The effects of this rule are not expected to be disproportionately greater or less for small handlers, producers or importers than for larger entities.

USDA has considered alternatives to these changes. The Act requires USDA to consult with the Board on changes to the Standards. An alternative considered was to continue the Standards in their current form. However, the industry believes these changes will increase efficiencies, make additional peanuts available for sale, and help update the Standards. Therefore, because of the anticipated benefits of these changes, this alternative was rejected. USDA has met with the Board, which is representative of the industry, and has included nearly all of its recommendations in this final rule.

The Act specifies in § 1601(c)(2)(A) that the Standards established pursuant to it may be implemented without

regard to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). However, USDA has considered the reporting and recordkeeping burden on handlers and importers under this program. Handlers and importers are only required to complete one form, the monthly acquisition of farmers stock peanuts. Under this final rule, this requirement will be removed, reducing the reporting burden. Recordkeeping requirements will remain the same. Accordingly, this rule will not impose any additional reporting or recordkeeping requirements on either small or large handlers or importers.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Board's meetings were widely publicized throughout the peanut industry, and all interested persons were invited to attend and participate in Board deliberations on all issues. Like all Board meetings, the June 26, 2015, and the November 18, 2015, meetings were public meetings, and all entities, both large and small, were able to express views on these issues.

Section 1601 of the Act also provides that amendments to the Standards may be implemented without extending interested parties an opportunity to comment. However, due to the nature of the proposed changes, interested parties were provided with a 60-day comment period.

A proposed rule concerning this action was published in the **Federal Register** on January 19, 2016 (81 FR 2775). Copies of the rule were mailed to all Board members, and a press release was issued regarding the proposed rule to notify the industry. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending March 21, 2016, was provided to allow interested persons to respond to the proposal.

Fifteen comments were received during the comment period in response to the proposal. The commenters included growers, shellers, manufacturers, congressional representatives, and an interested consumer. Fourteen of the comments were in support of the proposed rule. One comment was in opposition to the proposed changes to the outgoing quality requirements. Most of the points made by the commenter in opposition

were discussed at the public meetings on June 26, 2015, and November 18, 2015, prior to the Board's vote.

All 14 of the positive comments expressed support for finalizing the proposed rule as issued. Five of these comments referenced support of the proposal's recognition of modern business management, food safety progress and technological change. Two commenters noted the changes will better reflect current industry practices while revising outdated language and reducing regulatory burden on the industry. One comment asserted that the changes will eliminate waste and costs to the industry. Another expressed that under the change to the outgoing requirements, users of peanuts can still request the desired level of damage by specification in their contracts. One commenter stated that food safety will not be affected by these changes since the outgoing standards for aflatoxin are unchanged.

The one negative comment received was from a manufacturer and opposed the proposed changes to the outgoing quality requirements. Specifically, the comment opposed the changes that will merge the previously separate categories for damage and minor defects for unshelled peanuts and kernels into one overall allowance for damage and increases that allowance to 3.5 percent, stating that the current requirements for damage and defects aligned with their requirements.

The commenter expressed concerns that the changes to the outgoing quality standards may hinder their ability to control the type of peanut being supplied from shellers and could result in additional inspections and added costs. However, the modification to the outgoing standards will not alter the customer's ability to specify conformity regarding damage or defect. The manufacturer's contract with the supplier can still specify the types of damage and defect, thereby maintaining the desired transparency and ensuring the visual and sensory product quality required by the manufacturer. The Federal-State Inspection Service can certify peanuts at the damage level requested, so this change should not result in the need for additional inspections.

Further, peanut customer requirements can vary depending on the end use of the peanuts. This is why the Board recommended increasing the allowable damage under the Standards. Some segments of the peanut industry do not require the same threshold for damage and defect. The proposed changes will allow for additional peanuts to be utilized for manufacturing

in segments of the industry where cosmetic damage to the peanut is not as important.

The proposed changes to the outgoing quality requirement are designed to help improve the efficiency of handling operations and make additional peanuts available for all customers within the peanut industry. This was discussed during the public Board meetings on June 26, 2015, and November 18, 2015, prior to the Board's vote. During the meetings, Board members discussed the implication of adjusting the damage level to 3.5 percent and noted that the customer can still request a more stringent level than the Standards require. In fact, some manufacturers may already require tighter specifications for damage than currently allowed.

The commenter was also concerned with how these changes may affect aflatoxin levels and that the changes may result in more lots failing as to aflatoxin. All peanuts for human consumption will still be chemically analyzed by a USDA laboratory or a USDA-approved laboratory and certified "negative" as to aflatoxin. The criteria for the outgoing standard regarding aflatoxin was not modified as part of the proposed changes and still requires a certificate of analysis indicating that the level of aflatoxin does not exceed 15 parts per billion.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

#### **List of Subjects in 7 CFR Part 996**

Food grades and standards, Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 996 is amended as follows:

#### **PART 996—MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS MARKETING IN THE UNITED STATES**

- 1. The authority citation for 7 CFR part 996 continues to read as follows:

**Authority:** 7 U.S.C. 7958.

- 2. Section 996.3 is revised to read as follows:

**§ 996.3 Crop year.**

*Crop year* means the calendar year in which the peanuts were planted as documented by the applicant for inspection.

■ 3. Section 996.9 is revised to read as follows:

**§ 996.9 Inshell peanuts.**

*Inshell peanuts* means peanuts, the kernel or edible portions of which are contained in the shell in their raw or natural state which are milled but unshelled.

■ 4. Section 996.10 is revised to read as follows:

**§ 996.10 Inspection Service.**

*Inspection Service* means the Federal Inspection Service, Specialty Crops Program, Agricultural Marketing Service, USDA, or the Federal-State Inspection Service.

■ 5. Section 996.12 is revised to read as follows:

**§ 996.12 Outgoing inspection.**

*Outgoing inspection* means the sampling, inspection, and certification of either: shelled peanuts which have

been cleaned, sorted, sized, and otherwise prepared for further processing; or inshell peanuts which have been cleaned, sorted, and otherwise prepared for further processing.

■ 6. In § 996.13 revise the introductory text to read as follows:

**§ 996.13 Peanuts.**

*Peanuts* means the seeds of the legume *Arachis hypogaea* and includes both inshell and shelled peanuts produced in the United States or imported from foreign countries and intended for further processing prior to consumption by humans or animals, other than those intended for wildlife or those in green form for consumption as boiled peanuts.

\* \* \* \* \*

■ 7. Section 996.15 is revised to read as follows:

**§ 996.15 Positive lot identification.**

*Positive lot identification* is a means of identifying those peanuts meeting outgoing quality regulations as defined in § 996.31 and relating the inspection

certificate issued by the Inspection Service, as defined in § 996.10, to the lot covered so that there is no doubt that the peanuts in the lot are the same peanuts described on the inspection certificate.

**§ 996.17 [Removed and Reserved]**

■ 8. Section 996.17 is removed and reserved.

■ 9. Section 996.19 is revised to read as follows:

**§ 996.19 Shelled peanuts.**

*Shelled peanuts* means the kernels or portions of kernels of peanuts in their raw or natural state after the shells are removed.

**§ 996.30 [Amended]**

■ 10. Section 996.30 is amended by removing paragraphs (c) and (d).

■ 11. Section 996.31 is amended by revising the table following paragraph (a) and paragraph (b)(2) to read as follows:

**§ 996.31 Outgoing quality standards.**

(a) \* \* \*

### MINIMUM QUALITY STANDARDS—PEANUTS FOR HUMAN CONSUMPTION

[Whole kernels and splits: Maximum limitations]

Type and grade category	Unshelled peanuts and damaged kernels and minor defects (percent)	Total fall through sound whole kernels and/or sound split and broken kernels	Foreign materials (percent)	Moisture (percent)
<b>Excluding Lots of "splits"</b>				
Runner .....	3.50	6.00%; 17/64 inch round screen.	.20	9.00
Virginia (except No. 2) .....	3.50	6.00%; 17/64 inch round screen.	.20	9.00
Spanish and Valencia .....	3.50	6.00%; 16/64 inch round screen.	.20	9.00
No. 2 Virginia .....	3.50	6.00%; 17/64 inch round screen.	.20	9.00
Runner with splits (not more than 15% sound splits) .....	3.50	6.00%; 17/64 inch round screen.	.20	9.00
Virginia with splits (not more than 15% sound splits) .....	3.50	6.00%; 17/64 inch round screen.	.20	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	3.50	6.00%; 16/64 inch round screen.	.20	9.00
<b>Lots of "splits"</b>				
Runner (not less than 90% splits) .....	3.50	6.00%; 17/64 inch round screen.	.20	9.00
Virginia (not less than 90% splits) .....	3.50	6.00%; 17/64 inch round screen.	.20	9.00
Spanish and Valencia (not less than 90% splits) .....	3.50	6.00%; 16/64 inch round screen.	.20	9.00

(b) \* \* \*

(2) Not more than 3.50 percent peanuts with damaged or defective kernels;

\* \* \* \* \*

■ 12. In § 996.40, paragraph (a), the last sentence of paragraph (b)(2), and paragraphs (b)(5) and (6) are revised to read as follows:

**§ 996.40 Handling standards.**

(a) *Identification*: Each lot of shelled or cleaned-inshell peanuts intended for human consumption shall be identified by positive lot identification prior to being shipped or otherwise disposed of. Positive lot identification (PLI) methods are tailored to the size and containerization of the lot, by warehouse storage or space requirements, or by necessary further movement of the lot prior to certification. Positive lot identification is established by the Inspection Service and includes the following methods of identification. For domestic lots and repackaged import lots, PLI includes PLI stickers, tags or seals applied to each individual package or container in such a manner that is acceptable to the Inspection Service and maintains the identity of the lot. For imported lots, PLI tape may be used to wrap bags or boxes on pallets, PLI stickers may be used to cover the shrink-wrap overlap, doors may be sealed to isolate the lot, bags or boxes may be stenciled with a lot number, or any other means that is acceptable to the Inspection Service. The crop year means the calendar year in which the peanuts were planted as documented by the applicant. All lots of shelled and cleaned-inshell peanuts shall be shipped under positive lot identification procedures. However, peanut lots failing to meet quality requirements may be moved from a handler's facility to another facility owned by the same handler or another handler without PLI so long as such handler maintains a satisfactory records system for traceability purposes as defined in § 996.73.

(b) \* \* \*

(2) \* \* \* Both Subsamples 1–AB and 1–CD shall be accompanied by a notice of sampling or grade certificate, signed by the inspector, containing, at least, identifying information as to the handler or importer, and the positive lot identification of the shelled peanuts.

\* \* \* \* \*

(5) Handlers and importers may make arrangements for required inspection and certification by contacting the Inspection Service office closest to where the peanuts will be made available for sampling. For questions

regarding inspection services, a list of Federal or Federal-State Inspection Service offices, or for further assistance, handlers and importers may contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1536–S, (STOP 0240), Washington, DC, 20250–0240; Telephone: (202) 720–5870; Fax: (202) 720–0393.

(6) Handlers and importers may make arrangements for required chemical analysis for aflatoxin content at the nearest USDA or USDA-approved laboratory. For further information concerning chemical analysis and a list of laboratories authorized to conduct such analysis contact: Science and Technology Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0270, Washington, DC 20250–0270; Telephone (202) 690–0621; Fax (202) 720–4631.

\* \* \* \* \*

■ 13. In § 996.50:

- a. Revise paragraph (a);
- b. Remove paragraph (b)(2);
- c. Redesignate paragraph (b)(1) as paragraph (b)(2); redesignate paragraph (b) introductory text as (b)(1) and revise it;
- d. Remove paragraphs (e);
- e. Redesignate paragraphs (f), (g), (h), and (i) as paragraphs (e), (f), (g), and (h), respectively; and
- f. Revise newly redesignated paragraphs (e) and (f).

The revisions read as follows:

**§ 996.50 Reconditioning failing quality peanuts.**

(a) Lots of peanuts which have not been certified as meeting the requirements for disposition to human consumption outlets may be disposed for non-human consumption uses: *Provided*, That each such lot is positive lot identified using red tags, identified using a traceability system as defined in § 996.73, or other methods acceptable to the Inspection Service, and certified as to aflatoxin content (actual numerical count), unless they are designated for crushing. However, on the shipping papers covering the disposition of each such lot, the handler or importer shall cause the following statement to be shown: “The peanuts covered by this bill of lading (or invoice, etc.) are not to be used for human consumption.”

(b)(1) Sheller oil stock residuals shall be positive lot identified using red tags, identified using a traceability system as defined in § 996.73, or other methods acceptable to the Inspection Service, and may be disposed of domestically or to the export market in bulk or bags or other suitable containers. Disposition to crushing may be to approved crushers.

However, sheller oil stock residuals may be moved from a handler's facility to another facility owned by the same handler or another handler without PLI so long as such handler maintains a satisfactory records system for traceability purposes as defined in § 996.73.

\* \* \* \* \*

(e) Lots of shelled peanuts moved for remilling or blanching shall be positive lot identified and accompanied by valid grade inspection certificate, *Except* That, a handler's shelled peanuts may be moved without PLI and grade inspection to the handler's blanching facility that blanches only the handler's peanuts. Lots of shelled peanuts may be moved for remilling or blanching to another handler without PLI if the handler uses a traceability system as defined in § 996.73, *Except* That, any grade inspection certificates associated with these lots would no longer be valid. The title of such peanuts shall be retained by the handler or importer until the peanuts have been certified by the Inspection Service as meeting the outgoing quality standards specified in the table in § 996.31(a). Remilling or blanching under the provisions of this paragraph shall be performed only by those remillers and blanchers approved by USDA. Such approved entities must agree to comply with the handling standards in this part and to report dispositions of all failing peanuts and residual peanuts to USDA, unless they are designated for crushing.

(f) Residual peanuts resulting from remilling or blanching of peanuts shall be red tagged, identified using a traceability system as defined in § 996.73, or identified by other means acceptable to the Inspection Service, and returned directly to the handler for further disposition or, in the alternative, such residual peanuts shall be positive lot identified by the Inspection Service and shall be disposed of to handlers who are crushers, or to approved crushers, *Except* That, a handler may move the residual peanuts without PLI to a facility for crushing owned by the handler. Handlers who are crushers and crushers approved by USDA must agree to comply with the terms and conditions of this part.

\* \* \* \* \*

■ 14. In § 996.60:

- a. Revise paragraph (a);
- b. Remove paragraphs (b) and (c); and
- c. Redesignate paragraph (d) as paragraph (b).

The revision reads as follows:

**§ 996.60 Safeguard procedures for imported peanuts.**

(a) Prior to arrival of a foreign-produced peanut lot at a port-of-entry, the importer, or customs broker acting on behalf of the importer, shall submit information electronically to the United States Customs and Border Protection, which includes the following: The Customs Service entry number; the container number(s) or other identification of the lot(s); the volume of the peanuts in each lot being entered; the inland shipment destination where the lot will be made available for inspection; and a contact name or telephone number at the destination.

\* \* \* \* \*

**■ 15. In § 996.71:**

- a. Remove paragraph (a);
- b. Redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively;
- c. Revise newly redesignated paragraph (a); and
- d. Revise the last sentence in newly redesignated paragraph (b).

The revisions read as follows:

**§ 996.71 Reports and recordkeeping.**

(a) Each handler and importer shall maintain a satisfactory records system for traceability purposes as defined in § 996.73.

(b) \* \* \* USDA and USDA-approved laboratories shall file copies of all aflatoxin certificates completed by such laboratories with the Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 1st Street South, Winter Haven, Florida 33880; Telephone (863) 324-3375, Fax: (863) 291-8614, or other address as determined by USDA.

■ 16. Section 996.73 is revised to read as follows:

**§ 996.73 Verification of reports.**

(a) For the purpose of checking and verifying reports kept by handlers and importers and the operation of handlers and importers under the provisions of this Part, the officers, employees or duly authorized agents of USDA shall have access to any premises where peanuts may be held at any time during reasonable business hours and shall be permitted to inspect any peanuts that meet outgoing quality regulations, so held by such handler or importer and any and all records of such handler with respect to the acquisition, holding, or disposition of all peanuts meeting outgoing quality regulations, which may be held or which may have been disposed by handler.

(b) Reports shall be maintained by the handler for nonconforming products to

assure traceability throughout the supply chain. The traceability system must include documented records, which enable a full product history to be produced in a timely manner and must ensure product can be traced forward (raw material to distribution) and backwards from distribution to the warehouse feeding the shelling plant, and ensure that all associated tests and all relevant records have been completed. The traceability system shall include identification of all raw materials, process parameters (for specific lot), packaging and final disposition. The handler shall be able to identify the warehouse in which the peanuts were stored immediately prior to shelling. Traceability must be maintained throughout production runs with specific lot codes, and there shall be complete linkage from raw material receipt through final disposition.

**■ 17. In § 996.74:**

- a. Remove paragraph (a)(1);
- b. Redesignate paragraphs (a)(2) through (7) as paragraphs (a)(1) through (6), respectively;
- c. Revise newly redesignated paragraphs (a)(3) and (5); and
- d. Revise paragraph (b).

The revisions read as follows:

**§ 996.74 Compliance.**

(a) \* \* \*

(3) Commingles failing quality peanuts with certified edible quality peanuts and ships the commingled lot for human consumption use without meeting outgoing quality regulations;

\* \* \* \* \*

(5) Fails to maintain and provide access to records, pursuant to § 996.71, and the standards for traceability and nonconforming product disposition pursuant to § 996.73, on the reconditioning or disposition of peanuts acquired by such handler or importer; and on lots that meet outgoing quality standards; or

\* \* \* \* \*

(b) Any peanut lot shipped which fails to meet the outgoing quality standards specified in § 996.31, and is not reconditioned to meet such standards, or is not disposed to non-human consumption outlets as specified in § 996.50, shall be reported by USDA to the Food and Drug Administration and listed on an Agricultural Marketing Service Web site.

■ 18. Section 996.75 is revised to read as follows:

**§ 996.75 Effective time.**

The provisions of this part, as well as any amendments, shall apply to current crop year peanuts, subsequent crop year

peanuts, and prior crop year peanuts not yet inspected, or failing peanut lots that have not met disposition standards, and shall continue in force and effect until modified, suspended, or terminated.

Dated: July 27, 2016.

**Elanor Starmer,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2016-18116 Filed 7-29-16; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****18 CFR Part 35**

[Docket No. RM16-8-000; Order No. 828]

**Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities**

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is modifying the *pro forma* Small Generator Interconnection Agreement (SGIA). The *pro forma* SGIA establishes the terms and conditions under which public utilities must provide interconnection service to small generating facilities of no larger than 20 megawatts. The Commission is modifying the *pro forma* SGIA to require newly interconnecting small generating facilities to ride through abnormal frequency and voltage events and not disconnect during such events. The specific ride through settings must be consistent with Good Utility Practice and any standards and guidelines applied by the transmission provider to other generating facilities on a comparable basis. The Commission already requires generators interconnecting under the Large Generator Interconnection Agreement to meet such requirements, and it would be unduly discriminatory not to also impose these requirements on small generating facilities. The Commission concludes that newly interconnecting small generating facilities should have ride through requirements comparable to large generating facilities.

**DATES:** This final rule will become effective October 5, 2016.

**FOR FURTHER INFORMATION CONTACT:**

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#### SUPPLEMENTARY INFORMATION:

#### Order No. 828

##### Final Rule

1. In this Final Rule, the Commission modifies the *pro forma* Small Generator Interconnection Agreement (SGIA) originally set forth in Order No. 2006<sup>1</sup> and revised in Order No. 792<sup>2</sup> to require small generating facilities interconnecting through the SGIA to ride through abnormal frequency and voltage events and not disconnect during such events.<sup>3</sup> Pursuant to section 206 of the Federal Power Act (FPA), the Commission finds that, given the changes to conditions since the Commission last evaluated whether to impose ride through requirements on small generating facilities, the revisions to the *pro forma* SGIA are necessary to remedy undue discrimination by ensuring that small generating facilities have ride through requirements comparable to large generating facilities.<sup>4</sup>

2. As a result of this Final Rule, small generating facilities are required to not disconnect automatically or instantaneously from the system or equipment of the transmission provider and any affected systems for an under-frequency or over-frequency condition, or an under-voltage or over-voltage

condition. Furthermore, the transmission provider must coordinate the small generating facility's protective equipment settings with any automatic load shedding program (e.g., under-frequency load shedding, under-voltage load shedding). The specific ride through settings must be consistent with Good Utility Practice and any standards and guidelines applied by the transmission provider to other generating facilities on a comparable basis. These requirements will apply to new interconnection customers that execute or request the unexecuted filing of an SGIA on or after the effective date of this Final Rule. These requirements will also apply to existing interconnection customers that, pursuant to a new interconnection request, execute or request the unexecuted filing of a new or modified SGIA on or after the effective date of this Final Rule.

#### I. Background

3. The *pro forma* SGIA establishes the terms and conditions under which public utilities must provide interconnection service to small generating facilities of no larger than 20 megawatts (MW). Currently, the *pro forma* SGIA does not mandate that small generating facilities have the capability to ride through voltage or frequency disturbances.

4. In Order No. 2006, the Commission explored whether voltage ride through requirements proposed for large wind generating facilities should apply to small generating facilities.<sup>5</sup> A commenter during that proceeding asked the Commission to implement ride through standards for small generating facilities similar to those proposed for large generating facilities. However, other commenters responded that special capabilities, such as low voltage ride through, were not needed for any small generating facility, whether wind-powered or not. The Commission concluded that wind generating facilities interconnecting under Order No. 2006 would be small and would have minimal impact on the transmission provider's electric system and, therefore, need not be subject to ride through requirements.<sup>6</sup>

5. More recently, the Commission again addressed these requirements with regard to small generating facilities in Order No. 792.<sup>7</sup> In that proceeding,

the Commission proposed to revise section 1.5.4 of the *pro forma* SGIA to address the reliability concern related to automatic disconnection of small generating facilities during over- and under-frequency events, which could become a greater concern at high penetrations of distributed energy resources.<sup>8</sup> The proposed revisions to section 1.5.4 would have required the interconnection customer to design, install, maintain, and operate its small generating facility, in accordance with the latest version of the applicable standards to prevent automatic disconnection during over- and under-frequency events.<sup>9</sup>

6. The Commission declined to adopt this proposed revision in Order No. 792.<sup>10</sup> Instead, the Commission recognized that the Institute of Electrical and Electronics Engineers (IEEE) was, at the time, in the process of amending IEEE Standard 1547, which is an interconnection standard for interconnecting distributed resources with electric power systems that is referenced in the Small Generator Interconnection Procedures.<sup>11</sup> The Commission also noted that IEEE was about to begin a full IEEE Standard 1547 revision process in 2014, where frequency and voltage ride through requirements in the standard were to be evaluated. The Commission concluded that it would continue to monitor the IEEE Standard 1547 revision process and could revise the *pro forma* SGIA as it relates to IEEE Standard 1547 in the future, if necessary.<sup>12</sup>

7. Since the Commission issued Order No. 792, IEEE has completed a partial revision of IEEE Standard 1547, which is IEEE Standard 1547a. IEEE is now in the process of fully revising IEEE Standard 1547. The partially revised standard, IEEE Standard 1547a, permits generating facilities to have wider trip settings compared with IEEE Standard 1547. These wider trip settings allow generating facilities to stay connected to the grid for greater frequency or voltage excursions facilitating their ability to ride through such excursions. IEEE Standard 1547a also permits—but does

<sup>1</sup> *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006) (Order No. 2006).

<sup>2</sup> *Small Generator Interconnection Agreements and Procedures*, Order No. 792, 145 FERC ¶ 61,159 (2013), *clarified*, Order No. 792-A, 146 FERC ¶ 61,214 (2014) (Order No. 792).

<sup>3</sup> In Order No. 2003, the Commission defined "ride through" to mean a generating facility staying connected to and synchronized with the transmission system during system disturbances within a range of over- and under-frequency conditions, in accordance with Good Utility Practice. *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 562 n.88 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008) (Order No. 2003). Reliability Standard PRC-024-1 requires bulk electric system generation to ride through over- and under-voltage conditions.

<sup>4</sup> 16 U.S.C. 824e.

<sup>5</sup> Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 24.

<sup>6</sup> *Id.* The penetration of small generating facilities has increased since the Commission analyzed the impact of small generating facilities in Order No. 2006. *See infra* P 8.

<sup>7</sup> Order No. 792, 145 FERC ¶ 61,159.

<sup>8</sup> *Small Generator Interconnection Agreements and Procedures*, Notice of Proposed Rulemaking, 142 FERC ¶ 61,049, at P 46 (2013) (Order No. 792 NOPR). NERC defines distributed energy resources to mean resources that are distributed geographically and not centralized like traditional generation resources. NERC, *Essential Reliability Services Task Force Measures Report*, (Nov. 2015), <http://www.nerc.com/comm/Other/essntrlrbltyrvcstskfrcdL/ERSTF%20Framework%20Report%20-%20Final.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Order No. 792, 145 FERC ¶ 61,159 at P 220.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*



not mandate—ride through requirements.<sup>13</sup>

8. Following the Commission's evaluation of the need for ride through requirements for small generating facilities in the Order Nos. 2006 and 792 rulemaking proceedings, the impact of small generating facilities on the grid has changed, and the amount has increased. For example, as the North American Electric Reliability Corporation (NERC) has noted in multiple reports, the mix of generation resources is changing and the high penetration of distributed energy resources will impact the reliability of the electric grid if sufficient care is not taken to mitigate potential adverse impacts.<sup>14</sup> NERC also has found that a lack of coordination between small generating facilities and Reliability Standards can lead to events where system load imbalance may increase during frequency excursions or voltage deviations due to the disconnection of distributed energy resources, which may exacerbate a disturbance on the Bulk-Power System.<sup>15</sup> In addition, the Commission has observed the growth in grid-connected solar photovoltaic generation since the issuance of Order No. 2006 and the growth in small generator interconnection requests driven by state renewable portfolio standards, reductions in cost for solar panels, and deployment of new technologies.<sup>16</sup> Moreover, technology now available to newly interconnecting small generating facilities, such as smart inverters, permits the capability to ride through frequency and voltage disturbances.<sup>17</sup>

<sup>13</sup> IEEE Standard 1547a contains "must trip" requirements; it does not have "must ride through" requirements. By widening the trip settings, IEEE Standard 1547a permits generating facilities to trip at a later time. This change effectively allows generating facilities to ride through disturbances, but they are not required to do so.

<sup>14</sup> See NERC Special Report, *Potential Bulk System Reliability Impacts of Distributed Resources* (Aug. 2011), [http://www.nerc.com/docs/pc/ivgtf/IVGTF\\_TF-1-8\\_Reliability-Impact-Distributed-Resources\\_Final-Draft\\_2011.pdf](http://www.nerc.com/docs/pc/ivgtf/IVGTF_TF-1-8_Reliability-Impact-Distributed-Resources_Final-Draft_2011.pdf); see also NERC Integration of Variable Generation Task Force Draft Report, *Performance of Distributed Energy Resources During and After System Disturbance* (Dec. 2013), [http://www.nerc.com/comm/PC/Integration%20of%20Variable%20Generation%20Task%20Force%202011/IVGTF17\\_PC\\_FinalDraft\\_December\\_clean.pdf](http://www.nerc.com/comm/PC/Integration%20of%20Variable%20Generation%20Task%20Force%202011/IVGTF17_PC_FinalDraft_December_clean.pdf).

<sup>15</sup> NERC Essential Reliability Services Report at 21.

<sup>16</sup> See, e.g., Order No. 792, 145 FERC ¶ 61,159 at P 15; Solar Energy Indus. Ass'n, *Solar Industry Data*, <http://www.seia.org/research-resources/solar-industry-data> (last visited Jul. 5, 2016).

<sup>17</sup> See Electric Power Research Institute, *Recommended Settings for Voltage and Frequency Ride Through of Distributed Energy Resources*, 28–29 (May 2015), <http://www.epri.com/abstracts/Pages/ProductAbstract.aspx?ProductId=0000000030002006203>.

## II. Notice of Proposed Rulemaking

9. On March 23, 2016, the Commission issued a Notice of Proposed Rulemaking that proposed to add new section 1.5.7 to the *pro forma* SGIA,<sup>18</sup> which would require small generating facilities to ride through defined frequency and voltage disturbances.

10. In response to the NOPR, eleven entities submitted substantive comments, which generally support the Commission's proposal.<sup>19</sup> These comments have informed our determinations in this Final Rule.

## III. Discussion

11. For the reasons discussed below, we adopt the NOPR proposal and require small generating facilities to ride through abnormal frequency and voltage events comparable to large generating facilities. We find that, given the changes to conditions since the Commission last evaluated whether to impose ride through requirements on small generating facilities, the revisions to the *pro forma* SGIA are necessary to remedy undue discrimination by ensuring that small generating facilities have ride through requirements comparable to large generating facilities.<sup>20</sup> Specifically, since the Commission's last consideration of this issue, IEEE has revised its standards, and IEEE Standard 1547a now provides wider trip settings that allow small generating facilities more leeway to ride through disturbances. In addition, distributed energy resources have had an increasing presence and impact on the electric system. The absence of ride through requirements for small generating facilities increases the risk that an initial voltage or frequency disturbance may cause a significant number of small generating facilities to trip across a particular area or Interconnection, further exacerbating the initial disturbance. Large generating facilities are already subject to ride through requirements to avoid these types of occurrences.<sup>21</sup>

<sup>18</sup> *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, 154 FERC ¶ 61,222 (2016) (NOPR).

<sup>19</sup> Appendix A lists the entities that submitted comments and the shortened names used throughout this Final Rule to describe those entities.

<sup>20</sup> 16 U.S.C. 824e. The Commission routinely evaluates the effectiveness of its regulations and policies in light of changing industry conditions to determine if changes in these conditions and policies are necessary. See, e.g., *Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331 (2012).

<sup>21</sup> See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 562 n.88.

12. The Commission acknowledges that some areas have a greater penetration of distributed resources than others at this time. Nevertheless, the Commission believes that the proposed reforms to the *pro forma* SGIA are appropriate on an industry-wide basis now. The Commission continues to affirm that this Final Rule is not intended to interfere with state interconnection procedures or agreements in any way. The *pro forma* SGIA applies only to interconnections made subject to a jurisdictional open access transmission tariff (OATT) for the purposes of jurisdictional wholesale sales. Similar to the approach in Order Nos. 2006 and 792, the Commission hopes that the changes to the *pro forma* SGIA resulting from this Final Rule will be helpful to states when updating their own interconnection rules, but the states are under no obligation to adopt the provisions of the Commission's proposal.<sup>22</sup>

### A. Revision of the Pro Forma SGIA

#### 1. NOPR Proposal

13. In the NOPR, the Commission proposed to revise the *pro forma* SGIA to include proposed section 1.5.7, which would require interconnection customers to ensure the frequency ride through capability and the voltage ride through capability of small generating facilities that execute or request the unexecuted filing of interconnection agreements following the effective date of the proposed section 1.5.7. Proposed section 1.5.7 would also require a small generating facility not to disconnect automatically or instantaneously from the system or equipment of the transmission provider and any affected systems for an under-frequency or over-frequency condition, or an under-voltage or over-voltage condition. In addition, the transmission provider must coordinate the small generating facility's protective equipment settings with any automatic load shedding program.

#### 2. Comments

14. The substantive comments filed in response to the NOPR generally support the proposal to modify the *pro forma* SGIA.<sup>23</sup> Commenters agree with the need for fair and equitable treatment between small and large generating

<sup>22</sup> Order No. 792, 145 FERC ¶ 61,159 at P 27; Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 8.

<sup>23</sup> Peak Reliability Comments at 3; Idaho Power Comments at 2; PNM Comments at 1; SoCal Edison Comments at 2; ISO/RTO Council Comments at 6; Trade Associations Comments at 4; Bonneville Comments at 1; EPRI Comments at 7; NERC Comments at 2; PG&E Comments at 2.

facilities, the need for effective protections for system operation while also avoiding increased costs, and the potential to improve system stability and reliability over the coming years by adopting the proposed modifications to the *pro forma* SGIA.<sup>24</sup> Commenters acknowledge the proposal's benefits, stating it will simplify operational conditions, especially considering the rising small generator penetration levels on the distribution system.<sup>25</sup> NERC states that revising the *pro forma* SGIA to impose ride through requirements would be consistent with the results of a number of NERC's reliability assessments.<sup>26</sup> Trade Associations and PNM agree that the absence of ride through requirements for small generating facilities increases the risk that an initial voltage or frequency disturbance may cause a significant number of small generating facilities to trip offline, exacerbating the initial disturbance.<sup>27</sup>

15. Idaho Power claims that if more small generation facilities connect to its system, without the proposed changes to the *pro forma* SGIA, it would become increasingly difficult for it to comply with Reliability Standards PRC-006-2 (Automatic Underfrequency Load Shedding) and BAL-003-1.1 (Frequency Response and Frequency Bias Setting).<sup>28</sup>

16. The ISO/RTO Council recommends that the proposed required characteristics for small generating facilities should be demonstrated "as tested," and that this should be specified in the *pro forma* SGIA section 1.5.7. The ISO/RTO Council notes that demonstrating characteristics "as tested" is already required under section 24 of the large generator interconnection agreement (LGIA). The ISO/RTO Council further explains that, while the *pro forma* SGIA does not presently have such language, the "as tested" requirement applies to small generating facilities pursuant to the directives in Order No. 2006.<sup>29</sup>

17. Some commenters request that the Commission delay implementation of the Final Rule. While EPRI does not believe that additional action is required for other existing interconnected small generating facilities, EPRI comments that additional reliability studies may be required if aggregate penetration levels

increase sufficiently before the modifications to the *pro forma* SGIA and revised IEEE Standard 1547 become effective.<sup>30</sup> EPRI notes the need for timely revision and balloting of IEEE Standard 1547, as well as prompt adoption of the standard.<sup>31</sup> Trade Associations suggest waiting until after key industry standards are approved and the safety and effectiveness of smart inverter technology is validated.<sup>32</sup> Trade Associations request time to allow entities to resolve outstanding concerns such as personnel and asset safety, as well as the ability to effectively coordinate protections systems between the local utility and interconnecting resources.<sup>33</sup> EPRI and IEEE assert that relevant stakeholders, including transmission owners and transmission operators, should engage with the IEEE Standard 1547 revision process to ensure that the final framework and requirements for ride through can be consistently applied to meet individual system needs.<sup>34</sup>

18. Trade Associations claim that the new ride through capability requirements are only possible through smart inverter technology, but point out that key associated specifications contained in the reference standards remain unapproved. Trade Associations explain that distribution feeders are often designed as radial feeders that depend on remote generation to quickly disconnect when the utility source is disconnected. According to Trade Associations, failure to do so may result in unintentional islands which create safety hazards for personnel and customers, as well as liability concerns. Trade Associations caution that directing small generation facilities to ride through disturbances may create islanding conditions and relaxed response to fault conditions.

19. Further, Trade Associations claim that more industry discussion is needed to ensure that small generators' interconnections meet the unique regional utility safety and reliability concerns before the proposed revisions to section 1.5.7 of the *pro forma* SGIA are adopted. Trade Associations suggest that the Commission include the issues in this proceeding in the three regional technical conferences recommended by Edison Electric Institute in Docket No. RM16-6-000.<sup>35</sup>

20. Trade Associations also suggest that the Commission explore how changes made to the *pro forma* SGIA often influence state regulations. Trade Associations note that distribution level interconnections are broadly supported by industry standards and company interconnection rules; and alignment to *pro forma* SGIA may be inappropriate for some state regulations.<sup>36</sup>

### 3. Commission Determination

21. As discussed above, we find the revisions to the *pro forma* SGIA adopted herein are necessary to remedy treatment that is unjust, unreasonable, and unduly discriminatory and preferential because there is no technical or economic basis to require small and large generating facilities to follow different requirements in regards to voltage and frequency ride through. Our revisions will place similar requirements on large generating facilities and small generating facilities for ride through capabilities. As discussed above, the NOPR proposal received widespread support from commenters. Further, the absence of ride through requirements for small generating facilities may have adverse impacts on the reliability of the electric grid. We find that the lack of ride through requirements for small generating facilities is unduly discriminatory. This is due to the increased presence and impact of small generating facilities, including distributed energy resources, on the electric system, that could create reliability issues if they do not have the capability to ride through voltage or frequency disturbances. Further, improvements in technology, such as smart inverters, make it economically feasible for small generating facilities to ride through voltage and frequency disturbances. We acknowledge that some areas have a greater penetration of distributed resources than others at this time. Nevertheless, we believe that the proposed reforms to the *pro forma* SGIA are appropriate on an industry-wide basis now and that deferred action would not be appropriate.

22. We recognize the work of the IEEE 1547 Working Group, but we determine that there is a pressing need to establish ride through capability requirements at this time because we expect a continuing increase in penetration of small generating facilities. The revisions to the *pro forma* SGIA that we now approve will require the small

reforms to its rules and regulations regarding the provision and compensation of primary frequency response.

<sup>36</sup> Trade Associations Comments at 14.

<sup>24</sup> SoCal Edison Comments at 2; Peak Reliability Comments at 3; EPRI Comments at 7.

<sup>25</sup> PNM Comments at 2; Trade Associations Comments at 7.

<sup>26</sup> NERC Comments at 4.

<sup>27</sup> PNM Comments at 2; Trade Associations Comments at 7.

<sup>28</sup> Idaho Power Comments at 2.

<sup>29</sup> ISO/RTO Council Comments at 7 (citing Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 59).

<sup>30</sup> EPRI Comments at 7.

<sup>31</sup> *Id.* at 7-8.

<sup>32</sup> Trade Associations Comments at 7-8; EPRI Comments at 7-8.

<sup>33</sup> Trade Associations Comments at 7-8.

<sup>34</sup> EPRI Comments at 7-8.

<sup>35</sup> Trade Associations Comments at 13-14. In Docket No. RM16-6-000, the Commission issued a Notice of Inquiry seeking comment on the need for

generating facility to implement ride through settings based on a technical standard established by the transmission provider.

23. While Trade Associations point out that IEEE is revising IEEE Standard 1547, the standard does not currently require ride through capability. We are acting now to ensure that all affected jurisdictional small generating facilities will have the ride through capability, as allowed by IEEE Standard 1547a.<sup>37</sup>

24. We are persuaded by the ISO/RTO Council's recommendation to add the "as tested" language to section 1.5.7 of the *pro forma* SGIA to harmonize the requirements between the *pro forma* SGIA and the *pro forma* LGIA. Pursuant to this "as tested" language, the interconnection customer must provide the successfully completed test results to the transmission provider in a similar manner as in section 24.4 of the *pro forma* LGIA. We believe that the addition of "as tested" language does not create an extra burden on either party to an interconnection agreement because the *pro forma* SGIA already includes testing requirements in section 2.1.<sup>38</sup> The "as tested" language assures the transmission provider that the required ride through capability can actually be performed by the small generating facility.

25. We hereby adopt new section 1.5.7 of the *pro forma* SGIA showing the changes made to the Commission's proposal in the NOPR as follows:

1.5.7 The Interconnection Customer shall ensure "frequency ride through" capability and "voltage ride through" capability of its Small Generating Facility. The Interconnection Customer shall enable these capabilities such that its Small Generating Facility shall not disconnect automatically or instantaneously from the system or equipment of the Transmission Provider and any Affected Systems for a defined under-frequency or over-frequency condition, or an under-voltage or over-voltage condition, *as tested pursuant to section 2.1 of this agreement*. The defined conditions shall be in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the Balancing Authority Area on a comparable basis. . . .

26. We recognize the Trade Associations' concern about potential tension between ride through requirements and anti-islanding protection. Ensuring the safety of utility lineworkers is critically important, and

an issue the Commission takes seriously. Based on our consideration of the record, we believe that the ride through requirements adopted herein are technically and safely achievable. In particular, we note that this Final Rule provides significant flexibility for transmission providers to account for potential safety and islanding concerns. For example, the transmission provider can determine specific ride through settings needed to address those concerns so long as those settings are consistent with Good Utility Practice and any standards and guidelines applied to other generating facilities on a comparable basis.

27. Furthermore, we note that islanding and personnel safety are not new issues resulting from this Final Rule; to the contrary, they will continue to be important concerns regardless of the reforms adopted in this Final Rule. Accordingly, we emphasize the importance of implementing ride through requirements through careful coordination between the interconnection customer and the transmission provider, as well as the utilization of appropriate safety procedures for utility personnel, particularly effective and thorough communication for lineworkers in the field, when performing remedial actions following a system disturbance. We support the continued efforts by industry to explore innovative ways to detect island conditions in order to mitigate the risk of unintentional islands.

28. In light of our goal to prevent undue discrimination, we seek to provide guidelines that will be applied to generating facilities on a comparable basis, while allowing for justified differences on a case by case basis. For example, if a transmission provider believes a particular facility has a higher risk of unintentional islanding due to specific conditions on that facility, the revisions to the *pro forma* SGIA will permit the transmission provider to coordinate with the small generating facility to set ride through settings appropriate for those conditions, in accordance with Good Utility Practice and the appropriate technical standards. For facilities with a lower risk of forming an unintentional island, the transmission provider can implement a longer ride through requirement, in accordance with Good Utility Practice and the appropriate technical standards. We believe that the flexibility provided by section 1.5.7 allows for appropriate ride through requirements while recognizing the need to address any safety concerns.

## B. Referencing Specific Technical Standards

### 1. NOPR Proposal

29. In the NOPR, the Commission proposed to avoid prescriptive frequency and voltage ride through requirements to allow for the development of appropriate system-specific standards, noting that the standards can be based on work developed by recognized standards settings bodies, such as IEEE.

### 2. Comments

30. Commenters request that the proposed rule contain explicit references to standards such as the Reliability Standards and IEEE and UL standards.<sup>39</sup> The ISO/RTO Council states that Reliability Standards already provide requirements for coordination of automatic under-frequency generator tripping with automatic under-frequency load shedding programs that should be incorporated in the new ride through requirements. The ISO/RTO Council suggests that the *pro forma* SGIA explicitly reference Reliability Standard PRC-024 (Generator Frequency and Voltage Protective Relay Settings) and applicable regional Reliability Standards as part of the definition of "Good Utility Practice" and for the coordination of automatic generator tripping with automatic load shedding.<sup>40</sup> The ISO/RTO Council also recommends that the *pro forma* SGIA refer to the Reliability Standards and regional Reliability Standards for coordination of automatic generator tripping with automatic load shedding, and as appropriate, permit individual transmission providers to also reference their automatic load-shed program.

31. Commenters assert that specifying certain technical standards would be beneficial for consistent enforceability; specifically, some commenters suggest that the *pro forma* SGIA reference IEEE and UL 1741 standards to describe "Good Utility Practice."<sup>41</sup> EPRI and IEEE comment that failure to harmonize ride through requirements with the proposed draft IEEE 1547 requirements may introduce confusion and ultimately delay testing and compliance, exposing the electric system to an increased reliability risk.<sup>42</sup> PNM recognizes that there are challenges to developing specific settings applicable to all small generating facilities.<sup>43</sup> However, PNM states that the Commission should still

<sup>37</sup> As we also explained in the NOPR, the Commission's proposal was not intended to impede the ongoing efforts of the IEEE 1547 Working Group, and we reiterate that point here. NOPR, 154 FERC ¶ 61,222 at P 8 n.19.

<sup>38</sup> *Pro forma* SGIA, Section 2.1 "Equipment Test and Inspection."

<sup>39</sup> ISO/RTO Council Comments at 7.

<sup>40</sup> *Id.* at 6–7.

<sup>41</sup> PNM Comments at 3; EPRI Comments at 13; IEEE Comments at 2.

<sup>42</sup> EPRI Comments at 13; IEEE Comments at 2.

<sup>43</sup> PNM Comments at 2.

consider documenting some ride through expectation similar to those outlined in the LGIA requirements. PNM requests that the *pro forma* SGIA revisions consider a minimum ride through duration based on fault clearing times and a minimum voltage. PNM also requests that the Commission specify the location where the frequency and voltage measurements are taken to comply with the requirements, such as the point of interconnection.

32. SoCal Edison observes that the California Public Utilities Commission (CPUC) has established, through its retail Rule 21 tariff, smart inverter requirements for small generators interconnecting to the distribution systems of California's investor owned utilities, and low/high voltage ride through and low/high frequency ride through are part of the new required capabilities for small generators.<sup>44</sup> SoCal Edison explains that the CPUC ordered all investor owned utilities "to seek approval as may be needed for conforming changes to harmonize their federal wholesale Tariffs interconnection specifications with the revisions to Electric Tariff Rule 21."<sup>45</sup>

### 3. Commission Determination

33. We are not persuaded by commenters' arguments for the need to reference specific technical standards and decline to incorporate by reference any specific standard into the *pro forma* SGIA or to specify ride through duration and voltage and frequency levels. We therefore decline to modify the NOPR proposal in this regard.

34. To accommodate the differences in voltage and frequency ride through capabilities inherent in the different generation technologies, we believe that requiring basic performance expectations without explicitly specifying the duration or voltage and frequency levels allows the flexibility to apply appropriate ride through settings with coordination and approval of the transmission operator. As EPRI and IEEE note, the ride through requirement framework in the draft IEEE Standard 1547 is being structured along "performance categories" that take into account the technological differences of various types of small generating facilities. Once finalized, IEEE Standard 1547 may be used as a technical guide to meet the requirements adopted herein. Until revisions to IEEE Standard 1547 are finalized, however, transmission providers and affected interconnection customers must coordinate appropriate alternative

frequency and voltage ride through settings.

35. Furthermore, as a pragmatic matter, by setting minimum ride through capability requirements that are not tied to a specific standard, the requirements in section 1.5.7 of the *pro forma* SGIA would remain applicable following any updates from IEEE Standard 1547 or other applicable standards, without having to modify the *pro forma* SGIA each time any such standard is updated.

36. In response to PNM's clarification request, we clarify that the point of interconnection is the appropriate place to measure frequency and voltage to comply with the ride through requirements.

### C. Regional Differences

#### 1. NOPR Proposal

37. The Commission proposed to permit RTOs and ISOs to seek "independent entity variations" from the proposed revisions to the *pro forma* SGIA.

#### 2. Comments

38. Multiple commenters support the Commission's proposal to permit RTOs and ISOs to seek "independent entity variations" from the proposed revisions to the *pro forma* SGIA.<sup>46</sup>

39. Trade Associations request that the Commission also affirm the ability of transmission providers that are not members of RTOs or ISOs to seek variations from the *pro forma* SGIA to ensure consistency with regional reliability requirements. Trade Associations explain that differences in resource penetration and configuration (such as state renewable portfolio standards or wind generation in remote locations) have led to regional reliability requirements. Trade Associations note that the Commission recognized in Order No. 2003 that such regional reliability requirements might justify variations to *pro forma* interconnection agreements and procedures.<sup>47</sup> SoCal Edison believes that, to the extent that some regions may need additional time to implement the proposed ride through requirements on small generating facilities, the Commission should grant such time.<sup>48</sup>

#### 3. Commission Determination

40. We adopt the NOPR proposal and permit ISOs and RTOs to seek "independent entity variations" from

revisions to the *pro forma* SGIA.<sup>49</sup> Also, as proposed in the NOPR, if a transmission provider seeks a deviation from section 1.5.7 of the *pro forma* SGIA, it must demonstrate that the deviation is consistent with or superior to the principles set forth in this Final Rule.

41. In addition, we clarify that we will also consider requests for "regional reliability variations," provided that such requests are supported by references to regional Reliability Standards, explain why these regional Reliability Standards support the requested variation, and include the text of the referenced Reliability Standards.<sup>50</sup> While some regions currently have greater penetration of small generation facilities than others, we are acting now to set a national minimum ride through capability before future increases in deployment of small generation facilities.

### IV. Compliance and Implementation

42. Section 35.28(f)(1) of the Commission's regulations requires every public utility with a non-discriminatory open access transmission tariff OATT on file to also have an SGIA on file with the Commission.<sup>51</sup>

43. We reiterate that the requirements of this Final Rule apply to all newly interconnecting small generating facilities that execute or request the unexecuted filing of an SGIA on or after the effective date of this Final Rule as well as existing interconnection customers that, pursuant to a new interconnection request, execute or request the unexecuted filing of a new or modified SGIA on or after the effective date.

44. We require each public utility transmission provider that has an SGIA within its OATT to submit a compliance filing within 65 days following publication in the **Federal Register**.<sup>52</sup> The compliance filing must demonstrate that it meets the requirements set forth in this proposal.

45. The Commission recently issued Order No. 827, a final rule in Docket No. RM16-1-000, directing transmission providers to submit SGIA revisions

<sup>49</sup> See Order No. 792, 145 FERC ¶ 61,159 at P 274 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 822-827).

<sup>50</sup> See *id.* P 273 (citing Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 546).

<sup>51</sup> 18 CFR 35.28(f)(1).

<sup>52</sup> For purposes of this Final Rule, a public utility is a utility that owns, controls, or operates facilities used for transmitting electric energy in interstate commerce, as defined by the FPA. See 16 U.S.C. 824(e). A non-public utility that seeks voluntary compliance with the reciprocity condition of an OATT may satisfy that condition by filing an OATT, which includes an SGIA.

<sup>44</sup> SoCal Edison Comments at 3.

<sup>45</sup> *Id.*

<sup>46</sup> Trade Associations Comments at 12-13; SoCal Edison Comments at 4; ISO/RTO Council Comments at 6.

<sup>47</sup> Trade Associations Comments at 12-13.

<sup>48</sup> SoCal Edison Comments at 4.

related to reactive power requirements to the Commission.<sup>53</sup> Those compliance filings are due to the Commission on September 21, 2016. To facilitate administrative efficiency, we will require the compliance filings for this Final Rule and Order No. 827 to be filed in one combined filing. Once this Final Rule is published in the **Federal Register**, the Commission will provide a short extension to the compliance dates in both proceedings such that the compliance dates are the same.

46. As discussed above, we are not requiring changes to interconnection agreements that were executed prior to the effective date of this Final Rule. Instead, the requirements of this Final Rule apply to newly interconnecting small generating facilities that execute or request the unexecuted filing of an interconnection agreement on or after the effective date. The requirements of this Final Rule also apply to existing small generating facilities that, pursuant to a new interconnection request, require new or modified interconnection agreements that are executed or requested to be filed unexecuted on or after the effective date.

47. Some public utility transmission providers may have provisions in their existing SGAs or other document(s) subject to the Commission's jurisdiction that the Commission has deemed to be consistent with or superior to the *pro forma* SGA or are permissible under the independent entity variation standard or regional reliability standard.<sup>54</sup> Where these provisions would be modified by this Final Rule, public utility transmission providers must either comply with this Final Rule or demonstrate that these previously-approved variations continue to be consistent with or superior to the *pro forma* SGA as modified by this Final Rule or continue to be permissible under the independent entity variation standard or regional reliability standard.<sup>55</sup>

48. We find that transmission providers that are not public utilities must adopt the requirements of this Final Rule as a condition of maintaining the status of their safe harbor tariff or otherwise satisfying the reciprocity requirement of Order No. 888.<sup>56</sup>

#### V. Information Collection Statement

49. The following collection of information contained in this Final Rule is subject to review by the Office of Management and Budget (OMB) regulations under section 3507(d) of the Paperwork Reduction Act of 1995.<sup>57</sup> OMB's regulations require approval of certain information collection requirements imposed by agency rules.<sup>58</sup> Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number.

50. The reforms adopted in this Final Rule revise the Commission's *pro forma* SGA in accordance with section 35.28(f)(1) of the Commission's regulations.<sup>59</sup> This Final Rule applies to all newly interconnecting small generating facilities that execute or request the unexecuted filing of an SGA on or after the effective date of this Final Rule as well as existing interconnection customers that, pursuant to a new interconnection request, execute or request the unexecuted filing of a new or modified SGA on or after the effective date, to ensure frequency ride through capability and voltage ride

through capability in accordance with good utility practice and consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority area on a comparable basis. The reforms adopted in this Final Rule would require filings of SGAs with the Commission. The Commission anticipates the revisions required by this Final Rule, once implemented, will not significantly change existing burdens on an ongoing basis. With regard to those public utility transmission providers that believe that they already comply with the revisions adopted in this Final Rule, they can demonstrate their compliance in the filing required 65 days after the effective date of this Final Rule. The Commission will submit the proposed reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.<sup>60</sup>

51. While the Commission expects the revisions adopted in this Final Rule will provide significant benefits, the Commission understands that implementation would entail some costs. The Commission solicited comments on the accuracy of provided burden and cost estimates and any suggested methods for minimizing the respondents' burdens. The Commission did not receive any comments concerning its burden or cost estimates. As explained above, we will require the compliance filings for this Final Rule and Order No. 827 to be filed in one combined filing. We expect that this will reduce the burden on public utility transmission providers at the time the Commission gives notice of the extension of the compliance date and requirement to combine compliance filings.

**Burden Estimate:** The Commission believes that the burden estimates below are representative of the average burden on respondents. The estimated burden and cost for the requirements adopted in this Final Rule follow.<sup>61</sup>

<sup>60</sup> 44 U.S.C. 3507(d).

<sup>61</sup> Commission staff estimates that industry is similarly situated in terms of hourly cost (wages plus benefits). Based on the Commission 2016 average cost (wages plus benefits), \$74.50/hour is used.

<sup>53</sup> *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 81 FR 40,793 (Jun. 23, 2016), 155 FERC ¶ 61,277 (2016).

<sup>54</sup> See Order No. 792, 145 FERC ¶ 61,159 at P 270.

<sup>55</sup> See 18 CFR 35.28(f)(1)(i).

<sup>56</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,760–63 (1996), *order on reh'g*, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>57</sup> 44 U.S.C. 3507(d).

<sup>58</sup> 5 CFR 1320.11.

<sup>59</sup> 18 CFR 35.28(f)(1).

## FERC 516A REVISIONS IN RM16–8

	Number of respondents <sup>62</sup>	Annual number of responses per respondent	Total number of responses	Average burden (hrs.) & cost (\$) per response	Total annual burden hrs. & total annual cost (\$)
	(1)	(2)	(1)*(2)=(3)	(4)	(3)*(4)=(5)
Conforming SGIA changes to incorporate revisions.	118	1	118	7.5 hrs.; \$558.75 .....	885 hrs.; \$65,932.50
Total .....	.....	.....	118	7.5 hrs.; \$558.75 .....	885 hrs.; \$65,932.50

*Cost to Comply:* The Commission has projected the additional cost of compliance as follows:<sup>63</sup>

- Year 1: \$65,932.50 for all affected entities (\$558.75/utility)
  - Year 2 and subsequent years: \$0
- After implementation in Year 1, the reforms proposed in this Final Rule would be complete.

*Title:* FERC–516A, Standardization of Small Generator Interconnection Agreements and Procedures.

*Action:* Revision of currently approved collection of information.

*OMB Control No.:* 1902–0203.

*Respondents for This Rulemaking:* Businesses or other for profit and/or not-for-profit institutions.

*Frequency of Information:* One-time during Year 1.

*Necessity of Information:* The Commission adopts changes to the *pro forma* SGIA in order to more efficiently and cost-effectively interconnect generating facilities no larger than 20 MW (small generating facilities) to Commission-jurisdictional transmission systems. The purpose of this Final Rule is to revise the *pro forma* SGIA so small generating facilities can be reliably and efficiently integrated into the electric grid and to ensure that Commission-jurisdictional services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential. This Final Rule seeks to achieve this goal by amending the *pro forma* SGIA to include new section 1.5.7.

*Internal Review:* The Commission has reviewed the changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that

there is specific, objective support for the burden estimates associated with the information collection requirements.

52. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], email: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), Phone: (202) 502–8663, fax: (202) 273–0873.

53. Comments on the collection of information and the associated burden estimate in the Final Rule should be sent to the Commission in this docket and may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], at the following email address: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). Please reference OMB Control No. 1902–0203 and the docket number of this rulemaking in your submission.

## VI. Regulatory Flexibility Act

54. The Regulatory Flexibility Act of 1980 (RFA)<sup>64</sup> generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

55. The Small Business Administration (SBA) revised its size standards (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates. Under SBA's standards, some transmission owners will fall under the following category and associated size threshold: Electric

bulk power transmission and control, at 500 employees.<sup>65</sup>

56. The Commission estimates that the total number of public utility transmission providers that would have to modify the SGIA's within their currently effective OATTs is 118. Of these, the Commission estimates that approximately 43% are small entities. The Commission estimates the average cost to each of these entities will be minimal, requiring on average 7.5 hours or \$558.75. According to SBA guidance, the determination of significance of impact “should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.”<sup>66</sup> The Commission does not consider the estimated burden to be a significant economic impact. As a result, the Commission certifies that the reforms adopted in this Final Rule would not have a significant economic impact on a substantial number of small entities.

## VII. Environmental Analysis

57. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>67</sup> As we stated in the NOPR, the Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for the revisions adopted in this Final Rule under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and

<sup>65</sup> 13 CFR 121.201, Sector 22 (Utilities), NAICS code 221121 (Electric Bulk Power Transmission and Control).

<sup>66</sup> U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act*, at 18 (May 2012), [https://www.sba.gov/sites/default/files/advocacy/rfaguide\\_0512\\_0.pdf](https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf).

<sup>67</sup> *Regulations Implementing National Environmental Policy Act*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>62</sup> Number of Applicable Registered Entities.

<sup>63</sup> The costs for Year 1 would consist of filing proposed changes to the *pro forma* SGIA with the Commission within 65 days of the effective date of the final revision plus initial implementation. The Commission does not expect any ongoing costs beyond the initial compliance in Year 1.

<sup>64</sup> 5 U.S.C. 601–612.

charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.<sup>68</sup> The revisions adopted in this Final Rule would update and clarify the application of the Commission's standard interconnection requirements to small generating facilities.

58. Therefore, this Final Rule falls within the categorical exemptions provided in the Commission's regulations, and as a result neither an Environmental Impact Statement nor an Environmental Assessment is required.

### VIII. Document Availability

59. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

60. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

61. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

### IX. Effective Date and Congressional Notification

62. The Final Rule is effective October 5, 2016. However, as noted above, the requirements of this Final Rule will apply only to all newly interconnecting small generating facilities that execute or request the unexecuted filing of an SGIA on or after the effective date of this Final Rule as well as existing interconnection customers that, pursuant to a new interconnection request, execute or request the unexecuted filing of a new or modified SGIA on or after the effective date. The

Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this Final Rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, Government Accountability Office, and Small Business Administration.

By the Commission.

Issued: July 21, 2016.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

**Note:** The following Attachment will not appear in the Code of Federal Regulations.

### Appendix A—List of Substantive Commenters (RM16-8-000)

Bonneville Bonneville Power Administration  
Trade Associations Edison Electric Institute/American Public Power Association/Large Public Power Council/  
National Rural Electric Cooperative Association  
EPRI Electric Power Research Institute  
Idaho Power Idaho Power Company  
IEEE Institute of Electrical and Electronics Engineers  
ISO/RTO Council ISO/RTO Council  
NERC North American Electric Reliability Corporation  
PG&E Pacific Gas and Electric Company  
Peak Reliability Peak Reliability  
PNM Public Service Company of New Mexico  
SoCal Edison Southern California Edison Company

In addition, Entergy Services, Inc. submitted non-substantive comments.

[FR Doc. 2016-17843 Filed 7-29-16; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### 20 CFR Part 620

**RIN 1205-AB63**

### Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Employment and Training Administration (ETA) of the U.S. Department of Labor (Department)

is issuing this final rule to establish, for State Unemployment Compensation (UC) program purposes, occupations that regularly conduct drug testing. These regulations implement the Middle Class Tax Relief and Job Creation Act of 2012 (the Act) amendments to the Social Security Act (SSA), permitting States to enact legislation that would allow State UC agencies to conduct drug testing on UC applicants for whom suitable work (as defined under the State law) is available only in an occupation that regularly conducts drug testing (as determined under regulations issued by the Secretary of Labor (Secretary)). States may deny UC to an applicant who tests positive for drug use under these circumstances. The Secretary is required under the SSA to issue regulations determining those occupations that regularly conduct drug testing.

**DATES:** *Effective Date:* This final rule is effective September 30, 2016.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Simonetta, Office of Unemployment Insurance, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-4524, Washington, DC 20210; telephone: (202) 693-3225 (this is not a toll-free number); email: [simonetta.suzanne@dol.gov](mailto:simonetta.suzanne@dol.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

On October 9, 2014, The Department published a Notice of Proposed Rulemaking (NPRM) concerning occupations that regularly conduct drug testing at 79 FR 61013. The Department invited comments through December 8, 2014.

#### II. General Discussion of the Final Rule

On February 22, 2012, President Obama signed the Act, Public Law 112-96. Title II of the Act amended section 303, SSA, to add a new subsection (l) permitting States to drug test UC applicants as a condition of UC eligibility under two circumstances. The first circumstance is if the applicant was terminated from employment with the applicant's most recent employer because of the unlawful use of a controlled substance. (Section 303(l)(1)(A)(i), SSA.) The second circumstance is if the only available suitable work (as defined in the law of the State conducting the drug testing) for an individual is in an occupation that regularly conducts drug testing (as determined in regulations by the Secretary). If an applicant who is tested for drug use under either circumstance tests positive, the State may deny UC to

<sup>68</sup> 18 CFR 380.4(a)(15).



that applicant. On October 9, 2014, the Department published a Notice of Proposed Rulemaking (NPRM) concerning occupations that regularly conduct drug testing at 79 FR 61013. The NPRM proposed that occupations that regularly drug test be defined as those required to be drug tested in Federal or State laws at the time the NPRM was published. The NPRM also defined key terms:

- An “applicant” means an individual who files an initial claim for UC.
- “Controlled substance” is defined by reference to the definition of the term in Section 102 of the Controlled Substances Act. (This definition is in the Act.)
- “Suitable work” means suitable work as defined under the UC law of the State against which the claim is filed. It must be the same definition that the State otherwise uses for determining UC eligibility based on seeking work or refusal of work for an initial applicant for UC.

- Occupation means a position or class of positions.
- “Unemployment compensation” is defined as “cash benefits payable to an individual with respect to their unemployment under the State law.” This definition derives from the definition found in Federal UC law at Section 3306(h), FUTA.

The Department invited comments through December 8, 2014. This final rule defines those occupations that regularly conduct drug testing as required by section 303(l)(1)(A)(ii), SSA. The Department, separately from this rulemaking, issued guidance (Unemployment Insurance Program Letter (UIPL) No. 1–15) to States to address other issues related to the implementation of drug testing under 303(l), SSA.

### III. Summary of the Comments

#### *Comments Received on the Proposed Rule*

The Department received sixteen (16) comments (by letter or through the Federal e-Rulemaking Portal) by the close of the comment period. Ten (10) of the comments were from individuals; one was from an employer advocacy group; one was from an industry association; one was from a worker advocacy group; and three (3) were from governmental officials or committees. The Department considered all timely comments and included them in the rulemaking record. There were no late comments.

These comments are discussed below in the Discussion of Comments. We

address only those comments addressing the scope and purpose of the rule, the identification of occupations that regularly conduct drug testing. Therefore, comments received concerning the Department’s previously issued guidance about drug testing in UIPL No. 1–15; comments supporting or opposing drug testing in general; and comments about drug testing procedures, the efficacy of drug tests, and the cost of drug tests, are not addressed as these issues fall outside the scope of the statutory requirement that is the basis for this regulation. We made one change, discussed below, in response to the comments.

#### *Discussion of Comments*

A number of commenters opposed the limitation on the list of occupations requiring drug testing. Three commenters wrote that limiting the list of occupations requiring drug testing to those identified in Federal or State laws that were in effect on the date of publication of the NPRM (October 9, 2014) was not appropriate. Of those, one wrote it was uncertain if future amendments to the Federal regulations would incorporate future State law enactments mandating testing. One wrote that States would not be given sufficient time to enact legislation to add any occupations to the list already established by Federal or State law, and the public interest would be served by a broader interpretation of “regularly conducting drug testing.” One wrote it was an unnecessary obstacle to States using drug screening and testing to improve the chances that unemployed workers are ready to return to work.

One commenter wrote that the limitation was appropriate in order to provide the ability to assess the cost effectiveness of implementing drug testing in the UC program and that to do otherwise would circumvent the intent of Congress to limit authority to drug test to a small pool of workers for whom, because of their job requirements, drug testing is directly related to continued employment. The commenter asserted it was not the intent of Congress to cover a more expansive segment of the workforce, such as those subject to pre-employment screening.

The Department agrees with the commenters that the rule should not limit the list of occupations requiring drug testing, set forth in the NPRM, to those identified in specified Federal laws or those State laws that were in effect on the date of publication of the NPRM; thus, this provision is revised in the final rule to broaden its applicability as requested by commenters. In a dynamic economy, occupations change

over time, sometimes rapidly, and new occupations are created, and it is important that this rule contain the flexibility necessary to allow States and the Federal government to adapt to those changes. Thus, the regulation has been expanded to encompass any Federal or State law requiring drug testing regardless of when enacted. Specifically, section 620.3(h) has been revised to specify that occupations that regularly conduct drug testing include any “occupation specifically identified in a State or Federal law as requiring an employee to be tested for controlled substances.” In recognition of the fact that new federal laws may be enacted that may require drug testing for other occupations, and that those occupations may not necessarily be included in § 620.3(a)–(g), the Department added “Federal law” to § 620.3(h). This additional change ensures the final rule is consistent with the policy change being made in response to the comments. Additionally, the final rule eliminates the reference to dates where the proposed rule referenced State law and the specified Federal regulations in § 620.3(a)–(g). The Department will monitor changes in Federal law that affect the definition of “occupations” for which drug testing is required and inform States of any changes through guidance.

There is no evidence of Congressional intent for the legislation to permit testing on any basis other than the plain language of the statute, *i.e.*, *occupations* that regularly test for drugs. However, the Department agrees that changes to those occupations for which Federal or State law require drug testing should be accommodated by the regulation.

One commenter wrote that the proposed rule in Section 620.4(a), that drug testing is permitted only of an applicant, and not of an individual filing a continued claim for unemployment compensation after initially being determined eligible, would unduly limit drug testing to only the period after an applicant files an initial claim and before the applicant files a continued claim for unemployment compensation.

The plain language of Section 303(l), SSA, limits permissible drug testing to applicants for UC. “Applicants” are individuals who have submitted an initial application for UC. Once individuals have been determined eligible to receive UC, they are no longer applicants for UC. The act of certifying that certain conditions are met to maintain eligibility is different than making an application for UC benefits. This is illustrated throughout Title III, SSA. Section 303(h)(3)(B), SSA,



requiring UC information disclosures to the Department of Health and Human Services, and Section 303(i)(1)(A)(ii), SSA, requiring UC information disclosures to the Department of Housing and Urban Development, both refer to an individual who “has made application for” UC, distinguishing them from an individual who “is receiving” or “has received” UC. Similarly, Section 303(d)(2)(B), SSA, and Section 303(e)(2)(A), SSA, both refer to a “new applicant” for UC and then use the term “applicant” throughout the remainder of the subsection, signifying that the term is used to denote only an individual applying for UC for the first time. Thus, those provisions clarify that, as used in Section 303, SSA, an applicant is not a continuing claimant. Similarly, Section 303(l)(1)(B), SSA, permits the denial of UC based on the results of a drug test only to “applicants,” not as a condition of continued eligibility. As these provisions demonstrate, “applicant” refers to an initial claimant, not a continuing claimant; therefore, the final rule includes no changes to the requirements of Section 620.4(a).

Two commenters wrote that the rule arbitrarily narrows the definition of “occupations that regularly test for drugs” so that the potential number of applicants affected is negligible. They also noted that businesses regularly conduct drug testing in occupations without Federal or State mandate. For this reason, they believe the definition “occupations that regularly conduct drug testing” should include occupations for which employers already conduct drug testing outside those mandated by State or Federal law.

Section 303(l)(1)(A)(ii), SSA, requires the Secretary to identify those “occupations,” not employers, that regularly conduct drug testing. As explained in the NPRM, whether an occupation is subject to “regular” drug testing in private employment was not chosen as the standard here because it would be very difficult to implement in a consistent manner. Drug testing in occupations where it is not required by law is not consistent across employers, across industries, across the States, or over time; thus, we are unable to reliably and consistently determine which occupations require “regular” drug testing where not required by law. Even if certain employers do conduct drug testing for certain occupations when permitted to do so, that is not sufficient to show that those occupations are subject to regular drug testing because a significant number of employers may not drug test individuals working in those occupations. In

addition, those employers who conduct drug testing when they are not required by law to do so do not necessarily limit the testing to applicants or employees working in a specific occupation. The determination by an employer to drug-test all of its employees is not a determination that all of the occupations in which its employees fall are occupations for which drug testing is appropriate, under the requirements of this rule, but rather a determination in keeping with that employer’s beliefs about its business needs that drug testing is appropriate for all of its employees.

The final rule will permit States to require drug testing for UC eligibility for occupations that are subjected under State law to drug testing after the date of the NPRM publication, which ensures that there is flexibility for States to require drug testing for other occupations, while still providing predictability and consistency in identifying in this final rule what occupations are “regularly” drug tested. Thus, the Department has not changed the rule to address this concern.

One commenter wrote that the proposed rules would impose an unnecessary burden on the State agency to determine whether “suitable work” in a specific occupation is available in the local labor market.

The comment appears to misunderstand the proposed rule, which requires only that a State use the same definition of “suitable work” for UC drug testing as otherwise used in State UC law. The rule does not use the term “local labor market” when addressing suitable work. State UC agencies routinely make eligibility determinations about availability for work, search for work, and refusal of offers of suitable work. Whether work is available in the local labor market for UC claimants is one criterion for determining what constitutes “suitable” work under State UC law in some States, but this rule does not require it. For drug testing, section 303(l)(1)(A)(ii), SSA, provides, as one of the two permissible reasons for drug testing as a condition for the receipt of UC, that the applicant “is an individual for whom suitable work (as defined under the State law) is only available in an occupation that regularly conducts drug testing . . .” [Emphasis added.] Thus, the NPRM required that drug testing is permitted only if the applicant’s only suitable work requires it as a condition of employment. Because the rule’s definition of “suitable work” allows the States to apply their own current laws, the definition of suitable work in the proposed rule would not impose any

burden on States, and the Department has not changed the definition in the final rule.

One commenter wrote that the proposed rule, by limiting the scope of permissible drug testing, contradicts Congressional intent and the practices of many American businesses and the best interests of American workers.

The Department drafted the NPRM to be consistent with the language of the statute. The scope of drug testing contemplated in the NPRM is consistent with the statutory language; there is no evidence of Congressional intent in the legislative history which would require it to be interpreted more broadly than the Department interprets it in this regulation. Therefore, the Department declines to expand the scope of drug testing in this rule.

#### IV. Administrative Information

##### *Executive Orders 12866 and 13563: Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. For a “significant regulatory action,” E.O. 12866 asks agencies to describe the need for the regulatory action and explain how the regulatory action will meet that need, as well as assess the costs and benefits of the regulation.<sup>1</sup> This regulation is necessary because of the statutory requirement contained in new section 303(l)(1)(A)(ii), SSA, which requires the Secretary to determine the occupations that regularly conduct drug testing for the purpose of determining which applicants may be drug tested when applying for State unemployment compensation. OMB has determined that this rule is “significant” as defined in section 3(f) of E.O. 12866. Before the amendment of Federal law to add new section 303(l)(1), SSA, drug testing of applicants for UC as a condition of eligibility was prohibited.

However, the Department has determined that this final rule is not an economically significant rulemaking within the definition of E.O. 12866 because it is not an action that is likely to result in the following: An annual

<sup>1</sup> Executive Order No. 12866, section 6(a)(3)(B).

effect on the economy of \$100 million or more; an adverse or material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities; serious inconsistency or interference with an action taken or planned by another agency; or a material change in the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof. In addition, since the drug testing of UC applicants as a condition of UC eligibility is entirely voluntary on the part of the States, and since Section 303(l), SSA, is written narrowly, the Department believes that it is unlikely that many States will establish a testing program because they will not deem it cost effective to do so. The Department sought comment from interested stakeholders on this assumption. We received no comments on this topic.

There are limited data on which to base estimates of the cost associated with establishing a testing program. Only one of the two States that have enacted a conforming drug testing law issued a fiscal note. That State is Texas, which estimated that the 5-year cost of administering the program would be \$1,175,954. This includes both one-time technology personnel services for the first year to program the State UI computer system and ongoing administrative costs for personnel. The Texas analysis estimated a potential savings to the Unemployment Trust Fund of \$13,700,580 over the 5-year period, resulting in a net savings of approximately \$12.5 million. The Department believes it would be inappropriate to extrapolate the Texas analysis to all States in part because of differences in the Texas law and the requirements in this final rule. The Department has included this information about Texas for illustrative purposes only and emphasizes that by doing so, it is not validating the methodology or assumptions in the Texas analysis. Under the rule, States are prohibited from testing applicants for unemployment compensation who do not meet the narrow criteria established in the law. The Department requested that interested stakeholders with data on the costs of establishing a state-wide testing program; the number of applicants for unemployment compensation that fit the narrow criteria established in the law; and estimates of the number of individuals that would subsequently be denied unemployment compensation due to a failed drug test submit it during the comment period.

We received no comments that provided the requested information.

In the absence of data, the Department is unable to quantify the administrative costs States will incur if they choose to implement drug testing under this rule. States may need to find funding to implement a conforming drug testing program for unemployment compensation applicants. No additional funding has been appropriated for this purpose and current Federal funding for the administration of State unemployment compensation programs may be insufficient to support the additional costs of establishing and operating a drug testing program. States will need to fund the cost of the drug tests, staff costs for administration of the drug testing function, and technology costs to track drug testing outcomes. States will incur ramp up costs that will include implementing business processes necessary to determine whether an applicant is one for whom drug testing is permissible under the law; developing a process to refer and track applicants referred for drug testing; and the costs of testing that meets the standards required by the Secretary of Labor. States will also have to factor in increased costs of adjudication and appeals of both the determination of applicability of the drug testing to the individual and of the resulting determinations of benefit eligibility based on the test results.

The benefits of the rule are equally hard to determine. As discussed above, because permissible drug testing is limited under the statute and this rule, the Department of Labor believes that the provisions will impact a very limited number of applicants for unemployment compensation benefits. Only one State has estimated savings from a drug testing program in a fiscal note and the Department cannot and should not extrapolate results from those estimates.

#### *Paperwork Reduction Act*

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information, a brief description of the need for and proposed use of the information, and a request for comments on the information collections.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is

not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

The Department has determined that this final rule does not contain a "collection of information," as the term is defined. See 5 CFR 1320.3(c). The Department received no comments on this determination.

#### *Executive Order 13132: Federalism*

Section 6 of Executive Order 13132 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order. Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

This final rule does not have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of Government, within the meaning of the Executive Order. This is because drug testing authorized by the regulation is voluntary on the part of the State, not required.

#### *Unfunded Mandates Reform Act of 1995*

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (the Reform Act). Under the Reform Act, a Federal agency must determine whether a regulation proposes a Federal mandate that would result in the increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any single year. The Department has determined that since States have an option of drug testing UC applicants and can elect not to do so, this final rule does not include any Federal mandate that could result in increased expenditure by State, local, and Tribal governments. Drug testing under this rule is purely voluntary, so that any increased cost to the States is not the result of a Federal mandate. Accordingly, it is unnecessary for the

Department to prepare a budgetary impact statement.

#### *Plain Language*

The Department drafted this final rule in plain language.

#### *Effect on Family Life*

The Department certifies that this final rule has been assessed according to section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) for its effect on family well-being. The Department certifies that this final rule does not adversely impact family well-being as discussed under section 654 of the Treasury and General Government Appropriations Act of 1999.

#### *Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act*

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603(a) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis which will describe the impact of the final rule on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed or final rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This final rule does not affect small entities as defined in the RFA. Therefore, the rule will not have a significant economic impact on a substantial number of these small entities. The Department has certified this to the Chief Counsel for Advocacy, Small Business Administration, pursuant to the Regulatory Flexibility Act.

#### **List of Subjects in 20 CFR Part 620**

Unemployment compensation.

For the reasons stated in the preamble, the Department amends 20 CFR chapter V by adding part 620 to read as follows:

#### **PART 620—OCCUPATIONS THAT REGULARLY CONDUCT DRUG TESTING FOR STATE UNEMPLOYMENT COMPENSATION ELIGIBILITY DETERMINATION PURPOSES**

Sec.

620.1 Purpose.

620.2 Definitions.

620.3 Occupations that regularly conduct drug testing for purposes of determining which applicants may be drug tested

when applying for state unemployment compensation.

620.4 Testing of unemployment compensation applicants for the unlawful use of a controlled substance.

620.5 Conformity and substantial compliance.

**Authority:** 42 U.S.C. 1302(a); 42 U.S.C. 503(l)(1)(ii)

#### **§ 620.1 Purpose.**

The regulations in this part implement section 303(l) of the Social Security Act (SSA) (42 U.S.C. 503(l)). Section 303(l), SSA, permits States to enact legislation to provide for the State-conducted testing of an unemployment compensation applicant for the unlawful use of controlled substances, as a condition of unemployment compensation eligibility, if the applicant was discharged for unlawful use of controlled substances by his or her most recent employer, or if suitable work (as defined under the State unemployment compensation law) is only available in an occupation for which drug testing is regularly conducted (as determined under this part 620). Section 303(l)(1)(A)(ii), SSA, requires the Secretary of Labor to issue regulations determining the occupations that regularly conduct drug testing. These regulations are limited to that requirement.

#### **§ 620.2 Definitions.**

As used in this part—

*Applicant* means an individual who files an initial claim for unemployment compensation under State law. *Applicant* excludes an individual already found initially eligible and filing a continued claim.

*Controlled substance* means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of 21 U.S.C. 801 *et seq.*, as defined in section 102 of the Controlled Substances Act (Pub. L. 91–513, 21 U.S.C. 801 *et seq.*). The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

*Occupation* means a position or class of positions. Federal and State laws governing drug testing refer to the classes of positions that are required to be drug tested rather than occupations, such as those defined by the Bureau of Labor Statistics in the Standard Occupational Classification System. Therefore, for purposes of this regulation, a position or class of positions will be considered the same as an “occupation.”

*Suitable work* means suitable work as defined by the unemployment compensation law of a State against

which the claim is filed. It must be the same definition the State law otherwise uses for determining the type of work an individual must seek given the individual's education, experience and previous level of remuneration.

*Unemployment compensation* means any cash benefits payable to an individual with respect to their unemployment under the State law (including amounts payable under an agreement under a Federal unemployment compensation law.)

#### **§ 620.3 Occupations that regularly conduct drug testing for purposes of determining which applicants may be drug tested when applying for state unemployment compensation.**

Occupations that regularly conduct drug testing, for purposes of § 620.4, are:

(a) An occupation that requires the employee to carry a firearm;

(b) An occupation identified in 14 CFR 120.105 by the Federal Aviation Administration, in which the employee must be tested (Aviation flight crew members and air traffic controllers);

(c) An occupation identified in 49 CFR 382.103 by the Federal Motor Carrier Safety Administration, in which the employee must be tested (Commercial drivers);

(d) An occupation identified in 49 CFR 219.3 by the Federal Railroad Administration, in which the employee must be tested (Railroad operating crew members);

(e) An occupation identified in 49 CFR 655.3 by the Federal Transit Administration, in which the employee must be tested (Public transportation operators);

(f) An occupation identified in 49 CFR 199.2 by the Pipeline and Hazardous Materials Safety Administration, in which the employee must be tested (Pipeline operation and maintenance crew members);

(g) An occupation identified in 46 CFR 16.201 by the United States Coast Guard, in which the employee must be tested (Crewmembers and maritime credential holders on a commercial vessel);

(h) An occupation specifically identified in a State or Federal law as requiring an employee to be tested for controlled substances.

#### **§ 620.4 Testing of unemployment compensation applicants for the unlawful use of a controlled substance.**

(a) States may conduct a drug test on an unemployment compensation applicant, as defined in § 620.2, for the unlawful use of controlled substances, as defined in § 620.2, as a condition of eligibility for unemployment compensation if the individual is one

for whom suitable work, as defined in State law, as defined in § 620.2, is only available in an occupation that regularly conducts drug testing under § 620.3. Drug testing is permitted only of an applicant, and not of an individual filing a continued claim for unemployment compensation after initially being determined eligible. No State is required to apply drug testing to UC applicants under this part 620.

(b) A State conducting drug testing as a condition of unemployment compensation eligibility as provided in paragraph (a) of this section may apply drug testing only to the occupations listed under § 620.3, but is not required to apply drug testing to any of them.

(c) State standards governing drug testing of UC applicants must be in accordance with guidance, in the form of program letters or other issuances, issued by the Department of Labor.

#### **§ 620.5 Conformity and substantial compliance.**

(a) *In general.* A State law implementing the drug testing of applicants for unemployment compensation must conform with, and the law's administration must substantially comply with, the requirements of this part 620 for purposes of certification under Section 302 of the SSA (42 U.S.C. 502), of whether a State is eligible to receive Federal grants for the administration of its UC program.

(b) *Resolving issues of conformity and substantial compliance.* For the purposes of resolving issues of conformity and substantial compliance with the requirements of this part 620, the following provisions of 20 CFR 601.5 apply:

(1) Paragraph (b) of 20 CFR 601.5, pertaining to informal discussions with the Department of Labor to resolve conformity and substantial compliance issues, and

(2) Paragraph (d) of 20 CFR 601.5, pertaining to the Secretary of Labor's hearing and decision on conformity and substantial compliance.

(c) *Result of failure to conform or substantially comply.* Whenever the Secretary of Labor, after reasonable notice and opportunity for a hearing to the State UC agency, finds that the State UC law fails to conform, or that the State or State UC agency fails to comply substantially, with the requirements of title III, SSA (42 U.S.C. 501–504), as implemented in this part 620, then the Secretary of Labor must notify the Governor of the State and such State UC agency that further payments for the administration of the State UC law will not be made to the State until the

Secretary of Labor is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, the Department of Labor will not make further payments to such State.

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2016–17738 Filed 7–29–16; 8:45 am]

**BILLING CODE 4510–FN–P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

#### **21 CFR Parts 11 and 101**

[Docket No. FDA–2011–F–0171]

**RIN 0910–AG56**

#### **Food Labeling; Calorie Labeling of Articles of Food in Vending Machines; Extension of Compliance Date**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; extension of compliance date.

**SUMMARY:** The Food and Drug Administration (FDA or we) is extending the compliance date for certain requirements in the final rule requiring disclosure of calorie declarations for food sold from certain vending machines. The final rule appeared in the **Federal Register** of December 1, 2014. We are taking this action in response to requests for an extension and for reconsideration of the rule's requirements pertaining to the size of calorie disclosures on front-of-package labeling.

**DATES:** *Effective date:* This final rule is effective December 1, 2016.

*Compliance date:* The compliance date for type size front-of-pack labeling requirements (§ 101.8(b)(2) (21 CFR 101.8(b)(2))) and calorie disclosure requirements (§ 101.8(c)(2)) for certain gums, mints, and roll candy products in glass-front machines in the final rule published December 1, 2014 (79 FR 71259) is extended to July 26, 2018. The compliance date for all other requirements in the final rule (79 FR 71259) remains December 1, 2016.

#### **FOR FURTHER INFORMATION CONTACT:**

April Kates, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371, email: [april.kates@fda.hhs.gov](mailto:april.kates@fda.hhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

## **I. Background**

In the **Federal Register** of December 1, 2014 (79 FR 71259), we published a final rule establishing requirements for providing calorie declarations for food sold from certain vending machines. The final rule, which is codified primarily at § 101.8, will ensure that calorie information is available for certain food sold from a vending machine that does not permit a prospective purchaser to examine the Nutrition Facts Panel before purchasing the article, or does not otherwise provide visible nutrition information at the point of purchase. The declaration of accurate and clear calorie information for food sold from vending machines will make calorie information available to consumers in a direct and accessible manner to enable consumers to make informed and healthful dietary choices. The final rule applies to certain food from vending machines operated by a person engaged in the business of owning or operating 20 or more vending machines. Vending machine operators not subject to the rules may elect to be subject to the Federal requirements by registering with FDA.

The final rule also specifies how calories must be declared. In brief,

- Vending machine operators do not have to declare calorie information for a food if a prospective purchaser can view certain calorie information on the front of the package, in the Nutrition Facts label on the food, or in a reproduction of the Nutrition Facts label on the food subject to certain requirements, or if the vending machine operator does not own or operate 20 or more vending machines.

- Calorie declarations must be clear and conspicuous and placed prominently, and may be placed on a sign in, on, or adjacent to the vending machine, so long as the sign is in close proximity to the article of food or selection button.

- The final rule establishes type size, color, and contrast requirements for calorie declarations in or on the vending machines, and for calorie declarations on signs adjacent to the vending machines.

- The final rule establishes requirements for calorie declarations on electronic vending machines, those vending machines with only pictures or names of the food items, and those vending machines with few choices (e.g., popcorn machines).

The final rule also requires vending machine operator contact information to be displayed for enforcement purposes.

The final rule implements provisions of section 403(q)(5)(H) of the Federal

Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 343(q)(5)(H)).

In the preamble to the final rule (79 FR 71259 at 71282 through 71283), we stated that all covered vending machine operators must come into compliance with the rule's requirements no later than December 1, 2016.

## II. Extending the Compliance Date

### A. Introduction

Since we published the final rule in the **Federal Register**, several trade associations have contacted us to state that the type size requirement for calorie information on the package, often referred to as "front-of-pack" or FOP labeling, presents significant technical challenges to the packaged food industry. The trade associations asked us to amend the type size requirement for FOP labeling and to provide additional flexibility for providing calorie information for gums, mints, and roll candy (see Refs. 1 and 2).

### B. Type Size Requirement for "Articles of Food Not Covered" (§ 101.8(b)(2))

With respect to FOP labeling, § 101.8(b)(2), states that articles of food sold from a vending machine are not "covered vending machine food" if the prospective purchaser can otherwise view visible nutrition information, including, at a minimum the total number of calories for the article of food as sold at the point of purchase. The visible nutrition information must appear on the food label itself, be clear and conspicuous and able to be easily read on the article of food while in the vending machine, and be in a type size at least 50 percent of the size of the largest printed matter on the label and with sufficient color and contrasting background to other print on the label to permit the prospective purchaser to clearly distinguish the information.

In the preamble to the final rule (79 FR 71259 at 71269 (see comment 16 and our response)), we discussed how FOP labeling could be a way to provide visible nutrition information for articles of food that are sold from a vending machine that are not "covered vending machine food" as interpreted by § 101.8(c). We also noted how some comments felt that the rule's type size requirement was too large, whereas others stated that the type size would be too small (79 FR 71259 at 71269). We explained that specifying the minimum type size for calorie information on vending machine food labels will provide greater clarity for both compliance and enforcement (*id.*).

Since the publication of the final rule, several trade associations indicated that

the type size requirement would make the calorie declaration very large on some products and would make label redesign difficult and/or not practical. They noted the existence of voluntary FOP labeling programs whereby calorie information is presented in a FOP type size that ranges from 100 to 150 percent of the size of the "net quantity of contents" statement on the principal display panel. They also asked us to align the compliance date with that for the Nutrition Facts labeling rule (81 FR 33742, May 27, 2016) so that food companies can "make all changes to their food labels, including adding FOP calorie information, at the same time" (see Ref. 2). The compliance date for the Nutrition Facts label rule is July 26, 2018, for manufacturers with \$10 million or more in annual food sales.

Consequently, with respect to § 101.8(b)(2), we have decided to extend the compliance date for certain food products sold from a glass-front vending machine that allow prospective purchasers to view packaged foods offered for sale. Specifically, if the food is:

- Sold from a glass-front vending machine that allows prospective purchasers to view packaged foods offered for sale;
  - not a covered vending machine food within § 101.8(b)(2); and
  - the label for such packaged foods provides front-of-package calorie disclosures that complies with all aspects of the final vending machine labeling rule except that the disclosure is not 50 percent of the size of the largest print on the label,
- then the compliance date for § 101.8(b)(2) is extended to July 26, 2018. This extension of the compliance date will give us time to consider whether a revision to § 101.8(b)(2) is necessary and also give packaged food manufacturers more time to consider label redesign issues or, in the case of products without FOP calorie labeling, to consider whether to add such labeling. We emphasize that this extension is limited to vending machine operators whose glass-front vending machines are subject to § 101.8(b)(2) and where the packaged food has FOP calorie disclosures that complies with all aspects of the final vending machine labeling rule except that the disclosure is not 50 percent of the size of the largest print on the label. Thus, a vending machine operator whose vending machines dispense packaged food without FOP labeling or use electronic displays is not affected by the extension. Similarly, a vending machine operator whose vending machines sell

unpackaged food (such as fruit) is not affected by the extension.

### C. Signage for Gums, Mints, and Roll Candy

With respect to providing calorie information for gums, mints, and roll candy, our regulations, at § 101.8(c), establishes requirements for calorie labeling for certain food sold from vending machines. Under § 101.8(c)(2)(i)(C), the calorie declaration for covered vending machine food must include the total calories present in the packaged food, regardless of whether the packaged food contains a single serving or multiple servings. Under § 101.8(c)(2)(ii)(A), the calorie declarations for covered vending machine food must be clear and conspicuous and placed prominently on a sign in close proximity to the article of food or selection button so long as the calorie declaration is visible at the same time as the food, its name, price, selection button, or selection number is visible.

Several trade associations have disagreed with § 101.8(c)(2) insofar as it would apply to gums, mints, and roll candy. The trade associations contend that gums, mints, and roll candy suitable for vending machines are not typically amenable to FOP labeling due to the limited size of the principal display panel, and as a result, there are few options for compliance for these products. They also describe that in glass-front vending machines, these items are often placed together at the bottom of the machine with limited space for signage. In addition, the trade associations have asserted that providing calories declarations "per serving" for these items is preferable to providing calories "per container", because consumers typically do not consume the entire packaged product at one time, and providing calorie declarations on a "per serving" basis would be consistent with our serving size requirements at 21 CFR 101.9. The trade associations also explained that these items typically contain insignificant amounts of all nutrients and are otherwise exempt from packaged food nutrition labeling, and that providing a sign with a range of 0 to 25 calories "per serving" for these items is sufficient for consumers to make informed choices (Ref. 1). Based on these distinct challenges, the trade associations also suggested that we amend § 101.8(c)(2) by adding a new paragraph that would, in effect, provide an exception for gums, mints, and roll candies that would allow the use of a range of calories (such as "25 calories or

less/serving”) and the covered vending machine food:

- Contains at least three servings per package;
- has a “reference amount customarily consumed” (the portion size based on the amount the average person is likely to eat at one time) of 5 grams or less; and
- contains 25 calories or less per serving.

The trade associations indicated that the extension would only be for vending machine operators who, by December 1, 2016, have “interim calorie signage” that would consist of a single sign in close proximity to the article of food or selection button or inside the vending machine, where the sign states that gum, mint, and roll candies provide 25 calories or less/serving.

We addressed a similar issue in the preamble to the final rule (see 79 FR 71259 at 71276 through 71277 (see comment 24 and our response)) and explained why the calorie declaration requirement applies to the entire package rather than to a serving in the package. We disagree with the trade associations’ suggestion that the final vending machine rule’s serving size requirement should be consistent with that in our serving size rule. The vending machine rule applies to certain vending machine operators, whereas the serving size rule applies to food manufacturers. The statutory authority behind each regulation also differs; the vending machine label requirement is found in section 403(q)(5)(H) of the FD&C Act, which requires, generally, that food sold in certain vending machines disclose the number of calories contained in food, whereas section 403(q)(1)(A)(i) of the FD&C Act requires, with certain exceptions, that food that is intended for human consumption and offered for sale bear nutrition information that provides a serving size that reflects the amount of food customarily consumed and is expressed in a common household measure that is appropriate to the food. Section 2(b)(1)(B) of the Nutrition Labeling and Education Act further requires the Secretary of Health and Human Services to issue regulations to establish standards to define serving size. Nevertheless, we note that, in the preamble to the final vending machine rule, we said we would allow, in addition to the total calorie declaration for the food as vended, the voluntary declaration of calories per serving for covered vending machine foods (see 79 FR 71259 at 71277). The voluntary declaration of calories per serving, in addition to declaration of calories per

container (required by § 101.8(c)(2)), should accommodate the trade associations’ desire to disclose the number of calories per serving.

However, we also are mindful that the gums, mints, and roll candies mentioned by the trade associations tend to be sold in small packages that do not lend themselves to FOP labeling and often are located or placed in a small space in glass-front vending machines; the small space may limit the size of any sign(s) that would disclose calorie information for each gum, mint, or roll candy. For example, we are aware that some glass-front vending machines may have trays that are different sizes; the tray width for bags of potato chips is larger than the tray width for a roll of mints or hard candies or for a small package of gum. The smaller tray size for gums, mints, and roll candy may make it difficult to add information, inside the vending machine, beyond the product’s price and selection number. Therefore, we are extending the compliance date for § 101.8(c)(2) to July 26, 2018, so that we may consider this issue further. This extension of the compliance date is limited to:

- Gums, mints, and roll candy sold in packages that are too small to bear FOP labeling and where the gums, mints, and roll candy are located in a small space within a glass-front vending machine that allows prospective purchasers to view packaged foods offered for sale;
- the space within the glass-front vending machine holding the gum, mints, and roll candy is so small such that it is not practicable to provide calorie information under each gum, mint, or roll candy; and
- the glass-front vending machine also does not or is not capable of providing calorie information electronically.

This limited change in the compliance date for § 101.8(c)(2) will give us time to consider issues relating to signage and vending machine design and give vending machine operators some flexibility in their disclosure of calorie information for gums, mints, and roll candies in small packages. In the interim, so consumers can make informed choices, we encourage vending machine operators to provide calorie information through a sign in close proximity to the gums, mints, and roll candy inside the vending machine that states the gums, mints, and roll candies provide “X” calories or less/serving, where X represents the value of the largest number of calories per serving for the gums, mints, and roll candies. We emphasize that this extension does not extend to other

products in glass-front vending machines or glass-front vending machines that are capable of providing information electronically, nor does it extend to other types of vending machines. We also emphasize that the limited compliance date extension for § 101.8(c)(2) is intended to give vending machine operators more flexibility in providing calorie information for gums, mints, and roll candy in glass-front vending machines where those gums, mints, and roll candy are located or placed in a small space such that it is not practicable to provide calorie information under each gum, mint, or roll candy. Our final rule already gives vending machine operators other ways to comply with the calorie disclosure requirement; for example, vending machine operators can provide calorie declarations on a sign adjacent to the vending machine (see § 101.8(c)(2)(ii)(C)).

### III. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of this final rule (Ref. 3). We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule changes the compliance date for § 101.8(b)(2) and (c)(2), under the limited circumstances described in this document, from December 1, 2016, to July 26, 2018, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted

annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

#### IV. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

#### V. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### VI. References

The following references are on display in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <http://www.regulations.gov>.

1. Letter from Karin F. R. Moore, Vice President and General Counsel, Grocery Manufacturers Association, to Susan Mayne, Ph.D., Director, Center for Food Safety and Applied Nutrition, dated March 31, 2016.
2. Letter from Karin Moore, Senior Vice President and General Counsel, Grocery Manufacturers Association, to Susan Mayne, Ph.D., Director, Center for Food Safety and Applied Nutrition, dated June 26, 2016.
3. Economics Staff, Office of Planning, Office of Policy, Planning, Legislation, and Analysis, Office of the Commissioner, Food and Drug Administration, “Food Labeling; Calorie Labeling of Articles of Food in Vending Machines; Extension of Compliance Date,” dated July 2016.

Dated: July 27, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016-18140 Filed 7-29-16; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF THE INTERIOR

### Office of Natural Resources Revenue

#### 30 CFR Part 1241

[Docket No. ONRR-2012-0005; DS63644000 DR2PS0000.CH7000 167D0102R2]

RIN 1012-AA05

#### Amendments to Civil Penalty Regulations

**AGENCY:** Office of the Secretary, Office of Natural Resources Revenue, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Office of Natural Resources Revenue (ONRR) civil penalty regulations by expanding the regulations to all Federal mineral leases onshore and on the Outer Continental Shelf (OCS), to all Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners' lands, and to all easements, rights of way, and other agreements on the OCS; incorporating the civil penalty inflation adjustments pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act); clarifying and simplifying existing regulations for issuing a Notice of Noncompliance (NONC), Failure to Correct Civil Penalty Notice (FCCP), and Immediate Liability Civil Penalty Notice (ILCP); and providing notice that ONRR will post matrices for civil penalty assessments on its Web site.

**DATES:** *Effective Date:* August 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** For comments or questions on procedural issues, contact Armand Southall, Regulatory Specialist, by telephone at (303) 231-3221 or email to [armand.southall@onrr.gov](mailto:armand.southall@onrr.gov). For questions on technical issues, contact Geary Keeton, ONRR Chief of Enforcement, by telephone at (303) 231-3096 or email to [geary.keeton@onrr.gov](mailto:geary.keeton@onrr.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

ONRR is amending its civil penalty regulations.

On May 13, 1999, the Department of the Interior (Department) published a final rule (64 FR 26240) in the **Federal Register** (FR) governing Minerals Management Service (MMS) Minerals Revenue Management (MRM) issuance of notices of noncompliance and civil penalties.

On May 19, 2010, the Secretary of the Department (Secretary) reassigned MMS's responsibilities to three separate organizations. As part of this reorganization, the Secretary renamed

MMS's MRM to ONRR and transferred it to the Assistant Secretary of Policy, Management and Budget. This change required the reorganization of title 30 of the *Code of Federal Regulations* (30 CFR). In response, ONRR published a direct final rule on October 4, 2010 (75 FR 61051), to establish a new chapter XII in 30 CFR; to remove certain regulations from Chapter II; and to recodify these regulations in the new Chapter XII. Therefore, all references to ONRR in this rule include its predecessor MRM, and all references to 30 CFR part 1241 in this rule include former 30 CFR part 241.

#### II. Notice of and Comments on the Proposed Amendments

On May 20, 2014, ONRR published a Notice of Proposed Rulemaking (79 FR 28862) to amend ONRR's civil penalty regulations. In the preamble of the proposed rule, ONRR invited comments on all aspects of the proposed rule, including (1) the amount of the proposed processing fee for a hearing request, payment by Electronic Funds Transfer, and the form of identification to include with the fee; (2) the effect that the proposed processing fee could have on the filing of hearing requests; (3) the procedure to allow a motion for summary decision to be filed at any time after the case is referred to the Departmental Cases Hearings Division (DCHD), including before discovery commences; (4) whether industry should have the burden of showing by a preponderance of the evidence that it is not liable or that the penalty amount should be reduced; (5) whether the accrual of a penalty during the hearing process could be stayed; and (6) the definition of the term “*knowingly or willfully*.”

The proposed rulemaking provided for a 60-day comment period, which ended on July 21, 2014. During the public comment period, ONRR received 19 written comments: 11 responses from members of industry, 7 responses from industry trade groups or associations, and 1 response from the Jicarilla Apache Nation.

ONRR has carefully considered all of the public comments that we received during the rulemaking process. We hereby adopt final regulations governing the application, assessment, and issuance of and request for hearing on a NONC, FCCP, and ILCP. These regulations will apply prospectively to a NONC, FCCP or ILCP issued on or after the effective date that we specify in the **DATES** section of this preamble.

This final rule reflects revisions to the proposed rule. Also, consistent with the proposed rule, it amends the current



ONRR regulations to (1) apply the regulations to all Federal mineral leases onshore and on the OCS, to all Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners' lands, and to all easements, rights of way, and other agreements on the OCS; (2) incorporate the civil penalty inflation adjustments made pursuant to the 2015 Act; (3) clarify and simplify the existing regulations for issuing a NONC, FCCP, and ILCP; and (4) provide notice that ONRR will post matrices for civil penalty assessments on its Web site. The maximum civil penalty amounts for ONRR penalties under 30 U.S.C. 1719(a)–(d) were established in 1983 in the Federal Oil and Gas Management Act (FOGRMA). The civil penalties were not subsequently adjusted for inflation. The proposed rule, published on May 20, 2014 [79 FR 28862], adjusted the civil penalty amounts by 10 percent pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) (Inflation Adjustment Act). However, on November 2, 2015, the President of the United States signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the 2015 Act), which further amended the Inflation Adjustment Act. The 2015 Act required Federal agencies to adjust each civil penalty amount with an initial catch-up adjustment through an interim final rulemaking. The 2015 Act also requires Federal agencies to make annual inflation adjustments. In accordance with the 2015 Act, in a separate interim final rule, ONRR replaced the established 1983 maximum civil penalty amounts for each of the four established civil penalty tiers specified in 30 U.S.C. 1719(a)–(d). Therefore, the maximum civil penalty amounts in this final rule are greater than the amounts in the proposed rule because this final rule incorporates the adjustments made pursuant to the 2015 Act. Also, this final rule reflects other non-substantive technical changes and additions made to the proposed rule for the purpose of clarity. We discuss the revisions and amendments in more detail below.

#### A. General Comments

The majority of commenters expressed opposition to the proposed rule. The general comments fall into two categories: (1) The proposed rule is at odds with the FOGRMA civil penalty hierarchy, and (2) the proposed rule denies due process.

#### 1. The Proposed Rule Is at Odds With the FOGRMA Civil Penalty Hierarchy

*Public Comment:* Industry contends that the proposed rule expands the definitions of statutory terms, establishes too lenient of standards for agency notification to industry members, and seeks to invent new knowing or willful violations. Industry further contends that Congress did not authorize ONRR to impose broad-ranging knowing or willful civil penalties entirely at ONRR's discretion. Rather, Congress established a purposeful hierarchy of civil penalties.

*ONRR Response:* We include language in the preamble of this final rule that clarifies ambiguities and simplifies the processes for issuing and contesting a NONC, FCCP, and ILCP. We may issue either a NONC or ILCP, depending upon the type of violation we discover and whether it is knowing or willful. We acknowledge that FOGRMA does not expressly define some statutory terms, such as “*knowingly or willfully*,” “*submits*,” or “*maintains*.” Therefore, we clarify these terms as they relate to royalty and production information, collection, and management. We do not believe that the definitions expand on or redefine these terms, but rather clarify the terms to minimize ambiguity. We do not understand what industry means by a broad-ranging knowing or willful civil penalty. Congress authorized the Secretary to impose civil penalties for the specific violations identified in 30 U.S.C. 1719. The burden of proof lies with us to prove, by a preponderance of the evidence, the fact of the violation and the basis of the amount of the civil penalty.

#### 2. The Proposed Rule Denies Due Process

*Public Comment:* Industry asserts that the proposed rule would deprive a lessee of due process, including (1) precluding a lessee's statutory right to a full hearing on the record before an administrative law judge (ALJ), (2) preventing them from obtaining a stay of penalty accrual pending appeal of a FCCP or ILCP, and (3) unfairly shifting the adjudicatory role from an independent arbiter—an ALJ—to the agency that issued the contested civil penalty.

*ONRR Response:* We address industry concerns regarding due process under Specific Comments on 30 CFR part 1241—Penalties.

#### B. Specific Comments on 30 CFR Part 1241—Penalties

##### 1. Definitions and Standards

##### a. The Proposed Definition of the Term “Maintains” Is Invalid

*Public Comment:* ONRR received 13 comments stating that the definition of “*maintains*” in proposed 30 CFR 1241.3 is invalid because it imposes liability under 30 U.S.C. 1719(d)(1) for failing to ensure the continued accuracy of information after it is provided to ONRR for a data system or other official record. Industry's position is that the proposed definition of “*maintains*” makes two changes, exposing a lessee to potentially limitless liability for a knowing or willful violation under 30 U.S.C. 1719(d)(1). First, the proscribed conduct of knowingly or willfully maintaining false, inaccurate, or misleading information is converted from an affirmative act to the passive act or non-action of failing to correct information. Second, the duty to maintain is made applicable to external information; in other words, information already provided to ONRR. Industry emphasizes that the term “*maintains*” applies only to a lessee's internal preservation of its own records for agency review or inspection. Industry notes that FOGRMA does not define “*maintains*” and that the proposed definition would elevate 30 U.S.C. 1719(a) and (b) violations to a 30 U.S.C. 1719(d)(1) violation, which is not FOGRMA's intent. Industry further contends that, under the proposed definition, a lessee who is given prior notice of an inadvertent error will be subject to a knowing or willful civil penalty, which is reserved for a violation without prior notice.

Additionally, industry comments that the proposed 30 CFR 1241.3 and the preamble contain undefined “critical operative terms,” resulting in no guidance for a lessee. For example, industry contends that the proposed rule expands the scope of “*maintains*” because ONRR may pursue a knowing or willful violation under 30 U.S.C. 1719(d)(1) if a lessee receives “an email, preliminary determination letter, . . . or any other written communication” identifying a violation and fails to correct the violation. Industry contends that this would violate a lessee's due process rights because a lessee cannot appeal any communication that is not an order.

*ONRR Response:* Under 30 CFR 1210.30 each reporter/payor must submit accurate, complete, and timely information to ONRR according to the requirements. If you discover an error in



a previous report, you must file an accurate and complete amended report within 30 days of your discovery. The burden falls on us to prove that the alleged violator knew that the incorrect information existed on our data system—and the incorrect information remained uncorrected on our data system—or that the violator acted with reckless disregard or deliberate ignorance to the same.

Industry asserts that FOGRMA uses the term “*maintains*” to refer exclusively to industry’s internal recordkeeping. We conclude that “*maintains*” refers to both a party’s internal records and to external information that the party submitted into our industry-fed recordkeeping system. FOGRMA recognizes the importance of accuracy in this system, as evidenced by 30 U.S.C 1711, which mandates an accurate royalty accounting system. The statutory obligation to ensure the full and proper collection of a royalty owed for the production and sale of a Federal royalty-bearing resource depends on the accuracy of the information that a party reports.

In *Statoil USA E&P, Inc. v. ONRR*, 185 IBLA 302 (Apr. 29, 2015) (on interlocutory review of summary judgment ruling), the Interior Board of Land Appeals (IBLA) affirmed ALJ Harvey C. Sweitzer’s conclusion that found the term “*maintains*” applies to information regarding royalty computation and payment within a party’s internal recordkeeping system and to such information that a party has reported to us. *Id.* at 314. The IBLA concluded that, when a party has already submitted a report to us and later comes to know, whether through a party’s own efforts or notice from us, that the report is inaccurate and then fails to correct the report on time, that party has knowingly or willfully maintained inaccurate information and ONRR may assess a civil penalty under 30 U.S.C. 1719(d)(1). *Id.* at 315. Moreover, a party’s due process rights are not violated because they may challenge the ILCP through the hearing process.

**b. The Proposed Definition of the Term “Submits” Is Invalid**

**Public Comment:** ONRR received 10 comments asserting that the definition of “*submits*” in proposed 30 CFR 1241.3 is invalid. Industry asserts that ONRR’s definition overreaches and directly “contradicts the knowing or willful standard within 30 U.S.C. 1719(d) and is unlawful” because it bypasses the lower hierarchy violations set out in 30 U.S.C. 1719(a) and (b). Additionally,

industry contends that proposed 30 CFR 1241.60(b)(2) is unclear. It describes what information may be used as evidence of a knowing or willful violation, including lessee notification of a violation via a communication that is not an appealable order followed by correction of the violation and commission of “substantially the same violation in the future.” Industry contends that the quoted phrase is unclear because ONRR does not explicitly define what type of violation is “substantially the same.” Further, industry argues that ONRR should not be able to invoke the knowing or willful standard based on a communication that “does not even rise to the level of an appealable order.”

**ONRR Response:** The term “*knowingly or willfully*” is not defined in FOGRMA, which is why we are clarifying the term in the regulation. Reporting requirements are already defined in 30 CFR part 1210 and elsewhere; therefore, we can reasonably expect that information submitted to an ONRR system or representative will conform to those requirements. A party holding an interest in a Federal or Indian property must submit information that is correct, accurate, and not misleading. Furthermore, we are not required to prove “specific intent” to defraud, only that a party submitting false, inaccurate, or misleading information did so with actual knowledge, deliberate ignorance, or reckless disregard.

The proposed regulation did not explicitly define what constitutes “substantially the same” violation. For clarity the term “*substantially*” was removed from the final rule. ONRR will consider, on a case-by-case basis, a party’s history of noncompliance for the purpose of determining the appropriate amount of the civil penalty. Although 30 U.S.C. 1719(d)(1), as amended by the 2015 Act, allows for a penalty assessment “of up to \$58,871 per violation for each day such violation continues,” we rarely exercise our right to issue a penalty of this magnitude. FOGRMA provides that submission violations require no prior opportunity to correct before a civil penalty is issued. Therefore, industry’s argument that we should issue an appealable order before issuing the civil penalty is inconsistent with FOGRMA’s clear language.

**c. The Proposed Definition of the Term “Knowingly or Willfully” Is Invalid**

**Public Comment:** ONRR received six comments from industry stating that the definition of the term “*knowingly or willfully*” in proposed 30 CFR 1241.3 is

invalid because ONRR is defining “*knowingly or willfully*” to mean gross negligence, which is too low of a standard. Industry states that gross negligence requires ONRR to “show that a person has ‘failed to exercise even that care which a careless person would use.’” Industry argues that “ONRR cites no legal authority for equating ‘knowing or willful’ under FOGRMA with ‘gross negligence.’”

**ONRR Response:** In 30 CFR 1241.3 of the final rule, the definition of the term “*knowingly or willfully*” includes acting—or failing to act, as applicable—in reckless disregard of the facts surrounding the event or violation. Industry equates reckless disregard with gross negligence. Regardless of whether the terms are equivalent, the application of the reckless disregard standard is consistent with a recent ruling issued by ALJ Sweitzer in *Cabot Oil & Gas Corporation*, Case No. CP11–016 (DCHD June 5, 2015). ALJ Sweitzer held that the term “*willfully*” in 30 U.S.C. 1719 includes acts undertaken with reckless disregard. Further, ALJ Sweitzer suggested that gross negligence may support a finding that the conduct is “*willful*.” Consequently, the reckless disregard standard is an appropriate standard to measure a knowing or willful violation.

**d. The Proposed “Mens Rea” Standard Is Insufficient**

**Public Comment:** ONRR received 12 comments from industry stating that the “mens rea” standard of gross negligence in the definition of the term “*knowingly or willfully*” in proposed 30 CFR 1241.3 is too low of a standard for a 30 U.S.C. 1719(d) violation. Conduct that violates 30 U.S.C. 1719(d) is also criminally punishable under 30 U.S.C. 1720. Industry mentions that “*willfully*” can signify two different “mens rea” depending on whether it is being used in civil or criminal law. Industry argues that ONRR is improperly patterning the “mens rea” requirements for 30 U.S.C. 1719(d) on the lower civil “mens rea” requirements of the False Claims Act, despite the fact that a 30 U.S.C. 1719(d) violation is also punishable criminally.

The False Claims Act defines “*knowing*” to include reckless disregard. Because FOGRMA makes no mention of reckless disregard, industry contends that FOGRMA requires the government to prove criminal “mens rea” to establish liability. “ONRR’s Proposed Rule also fails to acknowledge that the “knowing or willful” standard in § 1719(d) is unique and must also warrant criminal liability under § 1720,” which would undercut Congress’ hierarchy penalty system already

established in FOGRMA and conflict with established principles of law.

**ONRR Response:** The proposed definition of the term “*knowingly or willfully*” is consistent with the history and purpose of FOGRMA. Congress was concerned by reports from the U.S. General Accounting Office (GAO, now the U.S. Government Accountability Office) discussing the government’s failure to collect royalties for oil and gas leases on Federal and Indian lands and the theft of oil and gas from those leases. The Secretary appointed the Linowes Commission (Commission) to address GAO’s claims. The Commission found numerous deficiencies, concluding that “the industry is essentially on an honor system.” In response, Congress passed FOGRMA and empowered the Secretary with the authority to impose a civil penalty to guard against a FOGRMA violation. When Congress established the tiered system of penalties, Congress stated that “a balance must be struck between the need to deter violations of the Act and the need to avoid a situation in which exposure to very severe penalty liability for relatively minor or inadvertent violations of necessarily complex regulations becomes a major disincentive to produce oil or gas from lease sites on Federal or Indian lands.”

Though FOGRMA does not define the term “*knowingly or willfully*,” courts generally do not dispute the meaning of the term “*knowingly*,” which denotes actual knowledge or intentional blindness. However, the term “*willfully*” may signify two different standards depending on whether it is being used in criminal or civil law. The IBLA considered the meaning of the term “*willful*” in *Meridian Oil, Inc.*, 147 IBLA 211 (1999), in the context of a civil penalty proceeding. The IBLA concluded that the term “*willfulness*” can be demonstrated through reckless disregard as to whether a violation is occurring. In *Cabot Oil*, ALJ Sweitzer addressed whether the criminal law mens rea standard for the term “*willfully*” should apply to knowing or willful violations under 30 U.S.C. 1719. ALJ Sweitzer concluded that “Congress intended the civil mens rea of reckless disregard for the law should be applied . . .” to willful violations under 30 U.S.C. 1719. Thus, the final rule’s definition of the term “*knowingly or willfully*” is in accordance with administrative rulings interpreting the term, and does not violate FOGRMA’s hierarchical penalty system.

Industry also commented that our proposed rule would improperly create criminal exposure for an individual who does not have the requisite “mens rea” for criminal conduct. The Supreme

Court considered a similar argument made in *Safeco Insurance Co. of America v. Burr*, 551 U.S. 47, 56–60 (2007), in which *Safeco* claimed that the word “*willfully*” in the civil provision of the Fair Credit Reporting Act (FCRA) cannot include recklessness because the criminal penalty provisions of the FCRA are triggered by actions that are engaged in knowingly and willfully. The Supreme Court disagreed, stating that “. . . in the criminal law, ‘willfully’ typically narrows the otherwise sufficient intent, making the government prove something extra, in contrast to its civil-law usage, giving the plaintiff a choice of mental states to show in making a case for liability.” *Safeco Ins. Co.*, 551 U.S. at 60. ONRR recognizes the different standards for civil and criminal actions and will apply the civil standard for each civil penalty brought under 30 U.S.C. 1719.

The proposed 30 CFR 1241.75 notes that the United States may pursue a criminal penalty if a party committed an act for which a civil penalty is provided in 30 U.S.C. 1719(d) and 30 CFR 1241.60(b)(2). The proposed 30 CFR 1241.75 was intended to clarify and explain the application of 30 U.S.C. 1719(d) in a civil context. However, after further consideration, we do not believe that it is necessary to provide a regulation to discuss criminal prosecution. Therefore, 30 CFR 1241.75 is removed from the final rule. The removal of 30 CFR 1241.75 in no way limits our ability to refer a violation for criminal prosecution under 30 U.S.C. 1720 or another statute.

e. “Strict Vicarious Liability” of a Lessee for the Act and Knowledge of Its Employee or Agent Is Untenable

**Public Comment:** ONRR received nine comments from industry contending that proposed 30 CFR 1241.60(b)(2) untenably imposes “strict vicarious liability” on a lessee for the act and knowledge of its employee or agent. The proposed section describes what information we may use as evidence of a knowing or willful violation, including “the acts and failures to act of [a lessee’s] employees and agents.” Industry opposes “strict vicarious liability” because ONRR would hold a lessee responsible for the knowledge of all its employees, even for a matter beyond the scope of the employee’s “employment, experience or responsibility.” Further, industry notes that a “specific intent criminal-type standard” cannot be imputed to a corporation where an employee acts without apparent authority and outside of the scope of his or her responsibilities.

Industry states that ONRR is relying on the “strict vicarious liability” standards in the False Claims Act which imposes “strict vicarious liability” on a corporation for the act and knowledge of its employee. Industry contends that ONRR cannot apply those standards to FOGRMA because they are two entirely different statutes. Industry states that ONRR must conduct a case-by-case evaluation of the relevant factors and may impute liability to the corporation only if the agent’s culpable act or knowledge is material to the agent’s duties. Industry also states that, under FOGRMA, a lessee may designate an agent for a royalty related matter and that ONRR recognizes such designation when a company fills out and submits an Addressee of Record Designation for Service of Official Correspondence (form ONRR-4444). Industry states that the proposed regulation would circumvent an otherwise orderly system in which liability should only be imputed for an act or knowledge of a designated agent. Industry contends that it would be unfair to “strictly and vicariously” impose a large civil penalty on a lessee under proposed 30 CFR 1241.60(b)(2) if a lessee fails to comply with any communication that ONRR sends to any company employee. Industry likewise contends that it is unfair to impose a civil penalty if ONRR fails to send official correspondence to the designated person by authorized means.

**ONRR Response:** The proposed definition of the term “*knowingly or willfully*” includes a situation where a corporation or individual in a corporation acts with actual knowledge, as well as a situation where the corporation acts with deliberate ignorance or reckless disregard. By holding the corporation vicariously liable for the employee’s actions, the final rule deters management from recklessly disregarding or deliberately ignoring the actions of an employee or agent. To avoid the possibility of a civil penalty, a company must exercise sufficient quality control and management oversight to ensure that it reports and pays correctly. The principle that a company can be held liable for the conduct of its agent or employee acting under apparent or actual authority, regardless of the actual knowledge of corporate management, is especially applicable in a civil penalty case brought under FOGRMA. A corporation acts through its employee and empowers its employee to conduct business on its behalf. In dealing with us, a corporation designates an employee as a point of contact using

form ONRR-4444. See 30 CFR part 1218, subpart H. A corporate employee who is designated or in regular contact with us, is an agent with the actual or apparent authority to communicate on behalf of, and bind, the corporation. And we reasonably and necessarily rely on the agent's authority to speak for the corporation. Further, relevant case law holds that knowledge of a non-managerial employee is imputed to a corporation regardless of the principal's or management's actual knowledge. See, for example, *United States v. Shackelford*, 484 F. Supp. 2d 669 (E.D. Mich. 2007) ("*Shackelford*") (False Claims Act); *ASME v. Hydrolevel Corp.*, 456 U.S. at 566–568 (1957) (antitrust); *United States ex rel. Bryant v. Williams Bldg. Corp.*, 158 F. Supp. 2d 1001, 1006–1009 (D. S.D. 2001) ("*Bryant*") (False Claims Act); see also *United States ex rel. Ann Fago v. M&T Mortgage Corp.*, 518 F. Supp. 2d 108, 124–125 (D.D.C. 2007) (False Claims Act) (rejecting the principle that a corporation is not liable for the acts of a non-managerial employee absent knowledge or recklessness by the corporation as going "against the great weight of authority in [False Claims Act] cases"). Indeed, in *Cabot Oil*, ALJ Sweitzer agreed with us that the scienter of an oil and gas company's non-managerial employee should be imputed to the company—at least when the company designates the employee as its point of contact. Therefore, our application of the knowingly or willfully standard under this final rule is in accordance with judicial and administrative rulings and does not circumvent or undercut FOGRMA's intent or authority.

## 2. Legal Principles

a. The Omnibus Appropriations Act, 2009, P.L. 111–8, Sec. 115, 123 Stat. 524 (2009 Appropriations Act) and the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, P.L. 111–88, Sec. 114, 123 Stat. 2928 (Codified at 30 U.S.C. 1720a) (2010 Appropriations Act) Authorizing the Application of FOGRMA to Solid Mineral Leases

*Public Comment:* One commenter expressed concern regarding the application of the proposed rule to solid mineral leases. Since FOGRMA did not cover solid mineral leases until mandated by the 2009 and 2010 Appropriations Acts, the commenter believes that solid mineral leases were shoehorned into FOGRMA with no consideration of the unique provisions of these leases. In addition, this commenter suggested that a conflict

exists with the Bureau of Land Management (BLM) regulation at 43 CFR 3485.1(e), which prescribes a different penalty for misreporting on a coal lease.

*ONRR Response:* FOGRMA established civil penalties relating to oil and gas development on Federal lands and the OCS. The 2009 and 2010 Appropriations Acts expanded the application of Section 109 of FOGRMA to any lease authorizing exploration for or development of coal, any other solid mineral, or any geothermal resource on any Federal or Indian lands and any lease, easement, right of way, or other agreement, regardless of form, for use of the OCS. If BLM issues a violation for misreporting on a coal lease, BLM regulation 43 CFR 3485.1(e) and any other pertinent BLM regulation will govern the penalty assessment. However, if we issue the violation for misreporting on a coal lease, we will follow the authority set forth in FOGRMA section 109 and any applicable lease terms.

b. ONRR Already Possesses Sufficient Civil Penalty Tools To Address a Reporting Error and Failure To Correct

*Public Comment:* ONRR received 14 comments stating that ONRR already possesses sufficient civil penalty tools to address a reporting error and failure to correct. Industry comments that ONRR does not explain why it is proposing wholesale changes to the current civil penalty regulation, given its existing clear and adequate enforcement path to address the conduct that it now seeks to shoehorn under 30 U.S.C. 1719(c) and (d).

Industry asserts that, under ONRR's preferred formulation, ONRR could sweep any reporting violation into 30 U.S.C. 1719(d), however alleged, that is not immediately corrected, thus merging the FOGRMA civil penalty provisions and eliminating the various hierarchy of violations that FOGRMA clearly established. Industry contends that ONRR lacks the authority to erase the graduated, proportionate, and strictly defined hierarchy of ascending civil penalties that Congress prescribed.

*ONRR Response:* We already possess the authority to issue a NONC, FCCP, or ILCP. This rule seeks to increase transparency and to clarify the purpose of each notice. Therefore, this final rule sets out more specific guidelines regarding the types of violations and how these violations prescribe the selection and issuance of each type of enforcement notice.

Moreover, in the 2009 and 2010 Appropriations Acts, Congress directed the Secretary to apply FOGRMA section

109 (30 U.S.C. 1719) to Federal and Indian solid mineral leases, geothermal leases, and agreements for OCS energy development under 43 U.S.C. 1337(p). This rule is necessary to effectively announce and clarify the authority set out in the 2009 and 2010 Appropriations Acts. The new 30 CFR 1241.2 states that this part will apply to all Federal mineral leases onshore and on the OCS, to all Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners' lands, and to all easements, rights of way, and other agreements on the OCS.

Title 30 CFR 1241.3 provides definitions for terms that are not comprehensively defined or, in most instances, not defined at all in the current 30 CFR 1241. For example, we already possess the authority to issue a civil penalty for knowing or willful violations under 30 U.S.C. 1719(c) and (d). This rule simply clarifies what the term "*knowingly or willfully*" means. Additionally, the definitions in this rule clarify broad terms. For instance, "*information*" is a broad term that the final rule defines as it pertains to royalty collection and management.

FOGRMA established a tiered system of civil penalties and structured liabilities for relatively minor or inadvertent violations to major, complex, or severe violations. Congress delegated to the Secretary the authority to impose a civil penalty to deter FOGRMA violations. We may issue either a NONC or ILCP, depending upon the type of violation we discover and whether it is knowing or willful. 30 CFR part 1210 provides specific requirements for reporting, including discovering errors and submitting corrections. Thus, a party's action or inaction dictates the type of 30 U.S.C. violation assessed.

c. ONRR's Application of 30 U.S.C. 1719(d)(1) Is Contrary to Law

*Public Comment:* ONRR received five comments asserting that ONRR is expanding 30 U.S.C. 1719(d)(1) contrary to law. Industry contends that "a plain reading of 30 U.S.C. 1719(d)(1), particularly within its statutory context, reveals that it does not apply to mere delays in correcting alleged errors not knowingly or willfully made when originally submitted." Further, industry contends that ONRR "parses out individual statutory terms and separately assigns new definitions created out of thin air," then uses these definitions to manufacture a new violation under 30 U.S.C. 1719(d)(1). The commenters state that the proposed rule does not faithfully interpret the

governing statute, but, instead, seeks to re-draft it.

**ONRR Response:** Industry comments that we are applying 30 U.S.C. 1719(d)(1) in matters of “mere delays in correcting alleged reporting errors.” In fact, we apply 30 U.S.C. 1719(d)(1) after confirming that the violator knowingly or willfully maintained incorrect information on our financial system and failed to make corrections on our financial system within a reasonable period of time. See, also, the discussion under Part II.B.1.a., above.

#### d. ONRR’s Application of 30 U.S.C. 1719(c) Is Contrary to Law

**Public Comment:** ONRR received three comments requesting that ONRR not revise its regulations implementing 30 U.S.C. 1719(c). Industry takes issue with proposed 30 CFR 1241.60(b)(1)(ii) setting forth the penalty for “knowingly or willfully fail[ing] to make any royalty payment . . .,” 30 CFR 1241.60(a)(1), or for “fail[ing] or refus[ing] to permit lawful entry, inspection, or audit.” 30 CFR 1241.60(a)(2). Industry objects to the addition of a new sentence in the proposed 30 CFR 1241.60(b)(1)(ii) that: “[ONRR] may consider [a party’s] failure to keep, maintain, or produce documents to be a knowing or willful failure or refusal to permit an audit.” Industry states that “The proposed rule tries to impose a uniform ‘knowing or willful’ definition for both [30 U.S.C.] 1719(c) and (d), when the applicable standard for [30 U.S.C.] 1719(d) must be considerably more strict.” Commenters state that ONRR “would convert any internal recordkeeping issue into an impediment of a hypothetical audit and thereby trigger greater penalties without notice.” And commenters state that “as written, proposed [30 CFR] 1241.60(b)(1)(ii) potentially could allow knowing or willful civil penalties based on an audit not even occurring.” The commenters state that ONRR cannot automatically impute 30 U.S.C. 1719(c) liability to a company for any alleged impediment of an audit by an employee.

**ONRR Response:** As stated in the preamble of the proposed rule, we issued a Dear Reporter Letter on March 10, 2011, explaining the recordkeeping requirements and the consequences of failing or refusing to produce requested documents. This letter warns of the penalty consequence for the failure to keep, maintain, or provide in a timely manner a document for an audit, compliance review, or investigation. Additionally, 30 U.S.C. 1713 and 30 CFR part 1212 include recordkeeping obligations that require a reporter to establish and maintain a record, make a report, provide information needed to

implement FOGRMA, determine compliance with a regulation or order, and produce a record upon request. Moreover, 30 CFR part 1212 states, “When an audit or investigation is underway, records shall be maintained until the record holder is released by written notice of the obligation to maintain records.” Therefore, 30 CFR 1241.60(b)(1)(ii) does not deviate from existing regulations or practice.

A company is legally required to have records available and ready for inspection. If an audit cannot be performed because of a company’s failure to produce documents, we are authorized to issue an ILCP for failing or refusing to permit an audit.

#### e. The Proposed Knowing and Willful Provisions Do Not Work With the Unbundling Issue

**Public Comment:** The Independent Petroleum Association of New Mexico (IPANM) contends that the proposed knowing and willful provisions do not work with the unbundling issue. IPANM states that unbundling requires “all natural gas producers to use specific formulae for each processing plant when calculating royalty payments to the [F]ederal government.” IPANM asserts that ONRR requires the use of an outdated unbundling cost allocation (UCA) to estimate a UCA for current and future reporting, which later requires replacement with an actual value. IPANM contends that this system creates uncertainty and will, ultimately, unfairly expose a company to liability for a knowing or willful violation.

**ONRR Response:** We are not required to provide a UCA, and a party is not required to use an ONRR-generated UCA. The use of an ONRR-generated UCA does not waive our statutory right to audit reasonable and actual costs for transportation and processing deductions. We will not assess a civil penalty simply because a party chooses to use an ONRR-generated UCA. A civil penalty may be assessed if a party is notified that an ONRR-generated UCA has changed and they knowingly or willfully failed to update their reporting.

#### f. ONRR’s Proposed Rule Contravenes the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA)

**Public Comment:** ONRR received two comments from industry stating that ONRR’s proposed rule contravenes FOGRMA as amended by RSFA because it treats a reporting error as a knowing or willful violation punishable under 30 U.S.C. 1719(d). Industry explains that RSFA amendments to FOGRMA reflect Congressional intent to establish a

“fairer and more moderate approach to enforcing accurate royalty reporting.” Industry contends that “RSFA demonstrated Congress’ intent that even ‘chronically submitted erroneous reports,’ let alone minor reporting errors, do not warrant knowing or willful civil penalties under 30 U.S.C. 1719(d).” Industry continues to explain that, under 30 U.S.C. 1724(d)(4)(B), ONRR may issue an order to perform restructured accounting (RSO) when ONRR or a delegated State determines, during an audit, that a lessee “has made identified underpayments or overpayments . . . based upon repeated, systemic reporting errors. . . .” However, industry notes that ONRR’s proposed rule would do away with the statutory RSO requirements and, in effect, define the failure to comply with an RSO as a knowing or willful maintenance of an inaccurate report. Therefore, industry concludes that “the RSFA amendments enacted in 1996 collectively demonstrate that Congress did not contemplate that reporting errors, even chronic reporting errors, were routinely in the scope of 30 U.S.C. 1719(d) knowing or willful civil penalties.”

**ONRR Response:** As discussed elsewhere in this preamble, FOGRMA established a tiered system of civil penalties and structured liabilities for relatively minor or inadvertent violations and major, complex, or severe violations. Congress delegated to the Secretary the authority to impose a civil penalty to sanction and deter FOGRMA violations. Industry commented that the proposed rule would impact statutory RSO requirements. If ONRR issues a RSO, a party may appeal and exhaust all available administrative and judicial remedies. Should a party not timely appeal a RSO, or should a final determination be made that a RSO is valid, and the company fails to comply with the RSO, a civil penalty may be assessed under 30 U.S.C. 1719. Furthermore, neither FOGRMA nor its amendments in RSFA define the term “knowingly or willfully,” leaving the definition to be clarified and established by regulations, judicial and administrative decisions, or both.

#### g. The Proposed Rule Understates Its Economic Impact

**Public Comment:** ONRR received three comments in which industry argues that ONRR’s estimation of the proposed rule’s annual financial impact is not credible. Commenters elaborate that “[t]he allowable daily civil penalties that could now accrue under ONRR’s expanded use of [30 U.S.C.] 1719(c) [and] (d) are several times

greater than penalties properly assessed under [30 U.S.C.] 1719(a) [and] (b).” Moreover, they assert that “under the Proposed Rule, penalty accrual could no longer be stayed and steep penalties could be pursued even when the lessor has not been deprived of substantial royalty.” Industry contends that “since ONRR could accumulate [civil] penalties without notice, there would be little to prevent ONRR from running up civil penalties before issuing an ILCP.” Additionally, industry states that “ONRR . . . relies on outdated gas penalty assessment data from 2007–2011.” Further, industry asserts that ONRR “seeks to bootstrap its ad hoc ‘initiative’ and apply more severe penalties on a widespread basis, even absent to date any final Departmental or judicial determination of ONRR’s novel interpretation of FOGRMA.” Finally, industry contends that ONRR’s proposed rule does not accurately depict the economic impact on small businesses and Indian Tribes and individual Indian mineral interest owners.

**ONRR Response:** As required by the 2009 and 2010 Appropriations Acts, we are expanding the application of Section 109 of FOGRMA to any lease authorizing exploration for or development of coal, any other solid mineral, or any geothermal resource on any Federal or Indian lands and any lease, easement, right of way, or other agreement, regardless of form, for use of the OCS. Further, we have updated our economic analysis of the impact of this rule with data through the end of October 2015. See, the discussion under Part III.1.A.–D., below. With respect to industry’s concern regarding the accrual of a steep penalty due to the removal of industry’s right to a stay of the accrual of a penalty, the final rule leaves intact the right to request a stay. Furthermore, ONRR cannot “run up” a civil penalty before issuing an ILCP. The date on which the ILCP is issued has no effect on the amount of the civil penalty because a knowing or willful civil penalty only accrues for as many days as the violating party allows it to accrue. A party that knowingly or willfully commits a violation can stop the accrual of the civil penalty at any time by simply correcting the violation.

#### h. ONRR’s Proposed Rule May Have Unintended Consequences

**Public Comment:** ONRR received five comments in which industry asserts that ONRR’s proposed rule may have unintended consequences. Industry contends that the rule “would chill communication with ONRR out of fear that any agency feedback or guidance

would be construed as notice forming the basis for potential knowing or willful civil penalties if that informal guidance is not strictly followed.” Additionally, industry argues that “total royalty collections may decrease as ONRR’s significant expansion of the most egregious civil penalty provision provides a disincentive to lessees, particularly smaller entities, from producing on Federal lands, Indian lands, and the OCS in the first instance.”

**ONRR Response:** We disagree that the final rule will “chill” communications. Indeed, the final rule will improve communications because the language clarifies ambiguity and simplifies the process for issuing and contesting a notice. Although industry contends that this rule will have unintended consequences, a majority of its provisions are already in practice, especially with the changes made between the proposed and final rule, as discussed elsewhere in this preamble. Further, the final rule will (1) apply the regulations to all Federal mineral leases onshore and on the OCS, to all Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners’ lands, and to all easements, rights of way, and other agreements on the OCS; (2) incorporate the civil penalty inflation adjustments made pursuant to the 2015 Act; (3) clarify and simplify the existing regulations for issuing a NONC, FCCP, and ILCP; and (4) provide notice that we will post matrices for civil penalty assessments on our Web site. These are the dominant consequences of the final rule, all of which are intended.

#### i. ONRR’s Royalty and Reporting Obligations Regarding Multiple Lessees or Leases

**Public Comment:** ONRR received one comment from industry regarding complying with ONRR’s royalty and reporting obligations in a situation where there are multiple lessees or leases. Industry stated that a lack of timely action from another surface management agency will result in a civil penalty action, specifically BLM’s delay in approving a unit revision.

**ONRR Response:** We appreciate industry’s comments; however, the action or inaction of another surface management agency is beyond the scope of this final rule. Further, we will evaluate each potential civil penalty matter on a case-by-case basis.

### 3. Due Process

#### a. Un-Reviewable Discretion of the Agency To Issue a Civil Penalty

**Public Comment:** ONRR received five comments asserting that the proposed rule circumvents the ALJ’s authority to review the appropriateness of a civil penalty. Further, industry expresses concern that civil penalty liability will be based on a communication that is not an appealable order. Moreover, industry states that “[a] lessee also would have no means to hold ONRR to its obligation to treat similar civil penalty cases in a similar manner; the aggrieved lessee would be foreclosed from ever questioning the agency’s rationale for disparate treatment, and ONRR would have no obligation to provide one.”

**ONRR Response:** In light of industry comments and upon further consideration, the final rule will leave intact the ALJ’s discretion and authority to review our issuance of a civil penalty. Proposed 30 CFR 1241.8 is removed from the final rule and replaced with 30 CFR 1241.8 addressing the ALJ holding a hearing and rendering a decision.

#### b. Inability of ALJ or Board to Stay the Accrual of a Penalty Pending Review

**Public Comment:** ONRR received 11 comments asserting that proposed 30 CFR 1241.12(b) would preclude any stay of the accrual of a penalty pending a hearing request before the ALJ or an IBLA appeal. Commenters argue that this proposed section prevents the appellant and the administrative tribunal from effectuating a stay in circumstances in which it is warranted, thereby taking away a lessee’s basic appeal right. Consequently, proposed 30 CFR 1241.12(b) would force a lessee “to either (i) subject itself to additional penalties . . . plus accumulating interest . . . or (ii) comply with a directive (possibly informal) that the lessee may believe is incorrect. . . .” Additionally, the section “would needlessly burden the Federal Judiciary with otherwise premature Federal Court lawsuits to obtain preliminary injunctive relief.”

**ONRR Response:** In light of industry comments and upon further consideration, the final rule leaves intact the right to request a stay of the accrual of a penalty. Thus, proposed 30 CFR 1241.12(b) is modified and the hearing requester’s opportunity to petition the ALJ to stay the accrual of a civil penalty is re-designated to 30 CFR 1241.11.

c. ONRR as Sole Gatekeeper to a Hearing on the Record

**Public Comment:** ONRR received eight comments asserting that the proposed rule makes ONRR the sole gatekeeper to a hearing on the record. Industry argues that proposed 30 CFR 1241.5 “would permit ONRR alone to decide whether [the] ALJ jurisdiction has been timely triggered to review either a NONC, [FCCP,] or [an ILCP.]” Proposed 30 CFR 1241.5 requires the hearing requester to provide certain information and a surety instrument or demonstration of financial solvency for an unpaid and accrued penalty plus interest within 30 days after service of the NONC, FCCP, or ILCP, and provides that, if a hearing request is incomplete, ONRR would not consider it to be filed and would return it to the lessee. Industry contends that proposed 30 CFR 1241.5 allows “unreviewable discretion to determine whether the appeal request is satisfactory, and imposes a blanket ban on extensions of the original 30-day period to provide that information.” Thus, the proposed rule potentially allows for a “right to a hearing on the record [to be] forever lost.”

Industry contends that the prerequisites to request a hearing set forth in proposed 30 CFR 1241.5 are burdensome and ambiguous. For instance, they contend that ONRR does not clearly articulate what is necessary for industry to explain its reasons for challenging a NONC, FCCP, or ILCP. Industry also contends that ONRR requires the submission of a surety instrument based on uncertain dollar amounts due, which is similar to using a “moving target to find the submitted security insufficient and deny a hearing on the record.” Moreover, industry disagrees with the requirement in proposed 30 CFR 1241.6 to use Pay.gov to pay the hearing request processing fee. Industry asserts that “ONRR must withdraw or revise and re-propose these proposed [hearing request] requirements.”

**ONRR Response:** The proposed rule invited public comment on new requirements pertaining to the filing of a hearing request on a NONC, FCCP, or ILCP. In light of industry comments and upon further consideration, the final rule does not include the proposed 30 CFR 1241.5 and 1241.6, which contained these new requirements. Title 30 CFR 1241.7 describes the method for filing all hearing requests, and 30 CFR 1241.5 and 1241.6 clarify which enforcement actions are and are not subject to a hearing.

Currently under 30 CFR 1241.54, a recipient of a NONC can request a

hearing on its liability for the NONC. Under the current 30 CFR 1241.56, the recipient may request a hearing on only the amount of the penalty. Likewise, under the current regulations, a recipient of an ILCP can request a hearing on its liability for the ILCP under 30 CFR 1241.62, or on the amount of the penalty under 30 CFR 1241.64. We believe that having four sections to request a hearing that result in the same process is confusing and redundant. Therefore, 30 CFR 1241.7 consolidates all four sections.

Under the final 30 CFR 1241.7, a party may still request a hearing on a NONC, FCCP, or ILCP before an ALJ. A party will have 30 days from receipt of a NONC, FCCP, or ILCP to file a hearing request. This provision is the same as the current regulations in 30 CFR 1241.54 (hearing request for a NONC) and 30 CFR 1241.62 (hearing request for liability for an ILCP). However, this provision will change current regulations at 30 CFR 1241.56(b) (hearing request for a FCCP) and 1241.64(b) (hearing request on the amount of a civil penalty assessed in an ILCP). The current regulations allow only 10 days for a party to request a hearing on a civil penalty assessment. Title 30 CFR 1241.7 extends the period within which to request a hearing to 30 days. Final 30 CFR 1241.7 also clarifies that the 30-day period may not be extended.

#### d. Motion for Summary Decision

**Public Comment:** ONRR received seven comments asserting that proposed 30 CFR 1241.8 allows ONRR to move for summary decision based on an alleged fact prior to an appellant initiating discovery to contravene that fact. Furthermore, they contend that ONRR is seeking to “reverse the black-letter rule that on a motion for summary [decision] disputed facts should be construed in favor of the non-movant.” Thus, they claim that ONRR is depriving a lessee of its right to a hearing on the record.

**ONRR Response:** Proposed 30 CFR 1241.8 allowed a motion for summary decision to be filed at any time after the case is referred to the DCHD, including before discovery commenced. Additionally, proposed 30 CFR 1241.8 included a new provision indicating that industry had the burden of showing by a preponderance of the evidence that it was not liable or that the penalty amount should be reduced. Furthermore, proposed 30 CFR 1241.9 outlined the requirements and standards for both parties to follow when filing a motion for summary decision, response, and reply.

After consideration of industry comments, we removed proposed 30 CFR 1241.8 and 1241.9 from the final rule. Nevertheless, the option of filing a motion for summary decision is available to either party upon the commencement of the case, and the burden will remain with the movant to demonstrate that there is no issue of material fact and that, as a matter of law, judgment is appropriate. The ALJ has the discretion to schedule and rule on any motion for summary decision. Additionally, even without a regulatory amendment, both parties should adhere to the customary standards for a motion for summary decision. Because proposed 30 CFR 1241.8 and 1241.9 are removed, 30 CFR 1241.8 is replaced with 30 CFR 1241.8 addressing the ALJ holding a hearing and rendering a decision, and proposed 30 CFR 1241.10, addressing the appeal of an ALJ’s decision, is re-designated as 30 CFR 1241.9.

#### e. Fixed Period To Correct

**Public Comment:** ONRR received five comments asserting that ONRR’s “absolute barrier” to providing an extension to correct a violation identified in a NONC is “patently unreasonable.” See proposed 30 CFR 1241.50(c). Industry alleges that “[a] NONC may require the lessee to perform a scope of work that is impossible to complete within the default 20-day period.” Industry believes that an extension should be considered for a justifiable reason on a case-by-case basis.

**ONRR Response:** A company’s compliance dictates whether or not we will issue a NONC. We are removing the language from 30 CFR 1241.50(c) that no extension will be given for a NONC. We provide a minimum of 20 days to correct a violation identified in a NONC, but hold the right to set out a longer cure period for a violation identified after taking into account all relevant factors and circumstances to achieve compliance.

#### f. Unreviewable Enforcement Actions

**Public Comment:** ONRR received five comments stating that ONRR should only base liability for a civil penalty on an appealable communication. Furthermore, the appeal clock or civil penalty should only run upon ONRR’s issuance of an order recognized under 30 CFR part 1290. Consequently, “the Proposed Rule creates unreviewable enforcement actions exempt from a hearing on the record, which could apply even where no opportunity existed to appeal the earlier communication.”

*ONRR Response:* When we issue an order, a company has the opportunity to appeal the order under 30 CFR part 1290 and can present new information and testimony (in the form of written affidavits) as part of that appeal. When we issue a FCCP or ILCP, a company has the opportunity to request a hearing. This rule clarifies that, if a party receives an ONRR order and does not appeal that order under current 30 CFR part 1290, that order is the final decision of the Department, and the order cannot be changed by subsequently requesting a hearing on a NONC, FCCP, or ILCP issued for failing to comply with that order.

g. Inability of the ALJ To Reduce a Civil Penalty Amount

*Public Comment:* ONRR received 12 comments requesting that ONRR eliminate proposed 30 CFR 1241.8(h)(1) in the final rule. Industry contends that the proposed rule is imposing on the ALJ's discretion and bars the ALJ from substantially reducing a penalty in circumstances where a reduction may be warranted. Additionally, industry alleges that ONRR may purposely delay the issuance of an ILCP in order to further penalize industry monetarily.

*ONRR Response:* The proposed rule would have prohibited the ALJ from reducing the penalty below half of the amount assessed, precluded the ALJ from reviewing our exercise of discretion to impose a civil penalty, and prohibited the ALJ from considering any factors in reviewing the amount of the penalty other than those specified in 30 CFR 1241.70. In light of industry's comments and upon further consideration, we dropped these provisions from the final rule.

We do not purposely delay the issuance of an ILCP in order to escalate the amount of a penalty assessment. Indeed, the date on which the ILCP is issued has no effect on the amount of the civil penalty because a knowing or willful civil penalty only accrues for as many days as the violating party allows it to accrue. A party that knowingly or willfully commits a violation can stop the accrual of the civil penalty at any time by simply correcting the violation, regardless of when we issue the ILCP.

h. ONRR's Stacked Deck

*Public Comment:* ONRR received two comments stating that the incorporation of the combined proposed amendments will stack the deck in ONRR's favor. This would result in an "interference with due process and the statutory right to a hearing on the record."

*ONRR Response:* In light of industry comments and upon further

consideration, we have removed or modified portions of the proposed rule so that the final rule addresses industry concerns. Those changes are indicated in our responses to industry's comments in this preamble under the subheadings 3.a. Unreviewable Discretion of the Agency to Issue a Civil Penalty, 3.b. Inability of the ALJ or Board to Stay the Accrual of a Penalty Pending Review, 3.c. ONRR as Sole Gatekeeper to a Hearing on the Record, 3.d. Motion for Summary Decision, 3.e. Fixed Period to Correct, 3.f. Unreviewable Enforcement Actions, and 3.g. Inability of the ALJ to Reduce a Civil Penalty Amount.

i. Refusal To Consider Royalty Implication in Determining Whether the Civil Penalty Amount Is Arbitrary

*Public Comment:* ONRR received four comments stating that the proposed amendments to 30 CFR 1241.70(b) explicitly disregards the royalty consequence of an underlying violation when ONRR is determining the amount of the civil penalty to assess. Industry suggests that a paperwork error should not be in the same tier as a royalty underpayment because the central purpose and motivation behind the enactment of FOGRMA is royalty collection. Industry further suggests that "when enacting FOGRMA, Congress was keenly aware of the need to preserve basic principles of proportionality between the amount of the penalty and the severity of the underlying offense." Industry declares that ONRR "not only ignores [the] basic tenet of proportionality but also explicitly calls for the agency to disregard it in imposing civil penalties." Industry states that this is especially true regarding ONRR's new proposed definitions of "maintains" and "submits" in proposed 30 CFR 1241.3. "ONRR's disregard of the royalty consequences of alleged reporting errors ignores Congressional intent to impose penalties that will deter violators but not jeopardize future leasing and operations." Finally, industry purports that "[s]ome of the factors that ONRR states it does intend to consider in setting penalty amounts also may result in unjust outcomes under ONRR's Proposed Rule." Specifically, industry objects to ONRR considering prior violations when assessing a future civil penalty assessment. Moreover, industry contends that the "'size of [a party's] business' should only be a mitigating factor for a small business, and not an arbitrary multiplier for larger entities."

*ONRR Response:* FOGRMA does not link the amount of a civil penalty to the royalty consequence of an underlying violation, and we will not issue a

reduced penalty because the violation produced little or no royalty consequence. Civil penalties are designed to promote compliance with lease terms and royalty statutes and regulations, and to encourage accurate and timely reporting. As a result, Congress authorized the secretary to impose civil penalties for reporting errors and failing to submit data, regardless of the royalty consequence of those violations. Indeed, many reporting errors and failures to submit data delay an audit or prevent ONRR or a delegated State from performing an audit, which can be penalized under FOGRMA. Accurate reporting is paramount to our obligation to collect and disburse revenues in a timely manner. Regardless of whether a party owes an additional royalty, or if there is any royalty consequence to the violation, misreporting can lead to a myriad of repercussions that affect not only us, but also surface management agencies, States, Indian Tribes, and others that rely on that reported data.

ONRR determines the amount of the civil penalty by considering the three factors set forth in 30 CFR 1241.70. Industry is aware of the factors considered by ONRR when determining the amount of a civil penalty. Additionally, industry is aware of its reporting requirements set forth in the regulations. FOGRMA authorizes steep penalties for 30 U.S.C. 1719 violations, but our assessments are already far below the maximum allowable under the law. We determine the amount of the civil penalty in accordance with 30 CFR 1241.70 which is consistent with our current practice.

j. Inconsistency in ONRR's Communication and Accountability

*Public Comment:* ONRR received two comments from industry stating that the proposed rule does not account for a situation when ONRR is erroneous in its assessment of wrongdoing or misreporting. Additionally, industry comments that ONRR's unresponsiveness, unwillingness to communicate, or both, is detrimental to the resolution of a time-sensitive issue.

*ONRR Response:* A party's right to request a hearing before an ALJ, and the right to appeal any ALJ decision, provides a party with recourse should we err in our assessment of wrongdoing or misreporting. Moreover, we evaluate each matter on a case-by-case basis. If we were unresponsive or unwilling to communicate, and our actions contributed to the delay giving rise to the civil penalty, we may consider this when determining whether to issue a civil penalty or as a mitigating factor



when determining the appropriate amount of the civil penalty.

**k. A Penalty Will Accrue From the Date When a NONC Is Served**

*Public Comment:* ONRR received one comment from industry requesting clarification regarding the start date of the civil penalty calculation.

*ONRR Response:* We typically serve a NONC, FCCP, or ILCP as set forth in FOGRMA section 109(h) (30 U.S.C. 1719) by registered mail or personal service to the addressee of record or alternate as identified in 30 CFR 1218.540 and will consider the notice served on the date when it was delivered. For an FCCP, the penalty calculation will begin running on the day when a party is served with the NONC. The penalty calculation for an ILCP will begin running from the day when the violation was committed.

### III. Procedural Matters

#### 1. Summary Cost and Royalty Impact Data

This is a technical rule that will (1) apply the regulations to all Federal mineral leases onshore and on the OCS, to all Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners' lands, and to all easements, rights of way, and other agreements on the OCS; (2) incorporate the civil penalty inflation adjustments made pursuant to the 2015 Act; (3) clarify and simplify the existing regulations for issuing a NONC, FCCP, and ILCP; and (4) announce our practice of publishing our civil penalty assessment matrices on our Web site. These changes will have no royalty impacts on industry; State and local governments; Indian Tribes; individual Indian mineral owners; or the Federal Government. As explained below, industry will not incur significant additional administrative costs under this final rule. However, industry can realize some increased penalties under this final rule. The Federal Government, and any States and Tribes that are eligible to share civil penalties under 30 U.S.C. 1736, will benefit from penalty amounts that we imposed, for the first time, on solid mineral and geothermal lessees. The cost and benefit information in item 1 of the Procedural Matters is used as the basis for Departmental certifications in items 2 through 10.

##### A. Industry

(1) *Royalty Impacts.* None.

(2) *Administrative Costs—Processing Fee.* None.

(3) *Penalties.* This final rule may result in some increase in civil penalties

that lessees must pay. We collected an average of \$1,879,264 in civil penalties annually for fiscal years 2007–2015. We estimated the potential increase in civil penalties due to application of part 1241 to solid mineral and geothermal leases by estimating how many lessees, operators, and royalty payors of solid mineral and geothermal leases there are in relation to all mineral leases that reported production and royalties as of October 2015. That estimate came to 9 percent of our current mineral reporter universe (135 solids and geothermal payors and reporters divided by 1,514 total payors and reporters (oil and gas; solids; and geothermal)). Therefore, we multiplied the \$1,879,264 in average annual civil penalties by 9 percent (solid mineral and geothermal payors and reporters) to estimate an increase in civil penalties that we collect of \$169,134.

##### B. State and Local Governments

(1) *Royalty Impacts.* None.

(2) *Administrative Costs.* None.

(3) *Penalties.* State governments having delegated audit authority under 30 U.S.C. 1735 will receive a 50-percent share of civil penalties collected as a result of their activities under our delegation of authority (30 U.S.C. 1736). However, the amount that a State government will receive due to the estimated increase discussed above is purely speculative.

##### C. Indian Tribes and Individual Indian Minerals Owners

(1) *Royalty Impacts.* None.

(2) *Administrative Costs.* None.

(3) *Penalties.* Indian Tribal governments that have cooperative agreements with us under 30 U.S.C. 1732 will receive a 50-percent share of civil penalties collected as a result of their activities under our delegation of authority (30 U.S.C. 1736). However, the amount that a Tribal government will receive due to the estimated increase discussed above is purely speculative.

##### D. Federal Government

(1) *Royalty Impacts.* None.

(2) *Administrative Costs.* The application of FOGRMA penalties to solid minerals and geothermal leases will produce a slight increase in the enforcement workload, which we likely will absorb using current staff.

(3) *Penalties.* As discussed above, we estimate that the Federal Government can receive \$169,134 in increased civil penalties for solid and geothermal leases as a result of this rule if no State or Tribe shares in these civil penalties.

#### 2. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public, where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

#### 3. Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will affect lessees under Federal mineral leases onshore and the OCS and all Federally administered mineral lease on Indian Tribal and individual Indian mineral owners' lands. Federal and Indian mineral lessees are, generally, companies classified under the North American Industry Classification System (NAICS), as follows:

- Code 211111, which includes companies that extract crude petroleum and natural gas.
- Code 212111, which includes companies that extract surface coal.
- Code 212112, which includes companies that extract underground coal.

For these NAICS code classifications, a small company is one with fewer than 500 employees. The Department estimates that 1,855 companies that this rule affects are small businesses that submit royalty and production reports from Federal and Indian leases to us each month.

Per our analysis shown in item 1 above, we do not estimate that this rule will result in a significant economic effect on a substantial number of small entities because this rule will cost



approximately a collective total of \$169,134 per year to affected small businesses. Therefore, a Regulatory Flexibility Analysis will not be required, and, accordingly, a Small Entity Compliance Guide will not be required.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and ten Regional Fairness Boards receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates the enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on our actions, call 1-(888) 734-3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination, retaliation, or both filed with the Small Business Administration will be investigated for appropriate action.

#### 4. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. We estimate that the maximum effect on all of industry will be \$169,134 annually. As shown in item 1 above, the economic impact on industry; State and local governments; Indian Tribes and individual Indian mineral owners; and the Federal government will be well below the \$100 million threshold that the Federal government uses to define a rule as having a significant impact on the economy.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, local government agencies; or geographic regions. See item 1 above.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

#### 5. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, we are not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et*

*seq.*) requires because this rule is not an unfunded mandate. See item 1 above.

#### 6. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this rule does not have any significant takings implications. This rule will not impose conditions or limitations on the use of any private property. This rule will apply to all Federal and Indian leases. Therefore, this rule does not require a Takings Implication Assessment.

#### 7. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The management of all Federal and Indian leases is the responsibility of the Secretary, and we distribute monies that we collect from the leases to States, Tribes, and individual Indian mineral owners. This rule does not substantially and directly affect the relationship between the Federal and State governments. Because this rule does not alter that relationship, this rule does not require a Federalism summary impact statement.

#### 8. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

a. Meets the criteria of section 3(a), which requires that we review all regulations to eliminate errors and ambiguity and to write them to minimize litigation.

b. Meets the criteria of § 3(b)(2), which requires that we write all regulations in clear language using clear legal standards.

#### 9. Consultation With Indian Tribal Governments (E.O. 13175)

The Department strives to strengthen its government-to-government relationship with the Indian Tribes through a commitment to consultation with the Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this rule and determined that it will have no substantial effects on Federally-recognized Indian Tribes. Likewise, these amendments to 30 CFR part 1241, subpart B, will not affect Indian Tribes because the changes are only technical in nature.

#### 10. Paperwork Reduction Act

This rule:

(a) Does not contain any new information collection requirements.

(b) Does not require a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). See 5 CFR 1320.4(a)(2).

#### 11. National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major Federal action, significantly affecting the quality of the human environment. We are not required to provide a detailed statement under NEPA because this rule qualifies for categorical exclusion under 43 CFR 46.210(i) in that this rule is “. . . of an administrative, financial, legal, technical, or procedural nature. . . .” This rule also qualifies for categorical exclusion under the Departmental Manual, part 516, section 15.4.(C)(1) in that its impacts are limited to administrative, economic, or technological effects. We also have determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments have no consequences on the physical environment. This rule will not alter, in any material way, natural resources exploration, production, or transportation.

#### 12. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211; therefore, a Statement of Energy Effects is not required.

#### List of Subjects in 30 CFR Part 1241

Civil penalties, Notices of noncompliance.

Dated: June 22, 2016.

**Kristen J. Sarri,**

*Principal Deputy Assistant Secretary for Policy, Management and Budget.*

#### Authority and Issuance

For the reasons discussed in the preamble, ONRR revises 30 CFR part 1241 to read as follows:

#### PART 1241—PENALTIES

##### Subpart A—General Provisions

Sec.

- 1241.1 What is the purpose of this part?
- 1241.2 What leases are subject to this part?
- 1241.3 What definitions apply to this part?
- 1241.4 How will ONRR serve a Notice?
- 1241.5 Which ONRR enforcement actions are subject to a hearing?
- 1241.6 Which ONRR enforcement actions are not subject to a hearing?
- 1241.7 How do I request a hearing on the record on a Notice?
- 1241.8 How will DCHD conduct the hearing on the record?

- 1241.9 May I appeal the ALJ's decision?  
 1241.10 May I seek judicial review of the IBLA decision?  
 1241.11 Does my hearing request affect a penalty?

#### Subpart B—Notices of Noncompliance and Civil Penalties

##### Penalties With a Period To Correct

- 1241.50 What may ONRR do if I violate a statute, regulation, order, or lease term relating to a lease subject to this part?  
 1241.51 What if I correct the violation identified in a NONC?  
 1241.52 What if I do not correct the violation identified in a NONC?

##### Penalties Without a Period To Correct

- 1241.60 Am I subject to a penalty without prior notice and an opportunity to correct?

#### Subpart C—Penalty Amount, Interest, and Collections

- 1241.70 How does ONRR decide the amount of the penalty to assess?  
 1241.71 Do I owe interest on both the penalty amount and any underlying underpayment or unpaid debt?  
 1241.72 When must I pay the penalty?  
 1241.73 May ONRR reduce my penalty once it is assessed?  
 1241.74 How may ONRR collect my penalty?

**Authority:** 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

#### Subpart A—General Provisions

##### § 1241.1 What is the purpose of this part?

This part explains:

- (a) When you may receive a NONC, FCCP, or ILCP.  
 (b) How ONRR assesses a civil penalty.  
 (c) How to appeal a NONC, FCCP, or ILCP.

##### § 1241.2 What leases are subject to this part?

This part applies to:

- (a) All Federal mineral leases onshore and on the OCS.  
 (b) All Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners' lands, regardless of the statutory authority under which the lease was issued or maintained.  
 (c) All easements, rights of way, and other agreements subject to 43 U.S.C. 1337(p).

##### § 1241.3 What definitions apply to this part?

- (a) Unless specifically defined in paragraph (b) of this section, the terms in this part have the same meaning as in 30 U.S.C. 1702.  
 (b) The following definitions apply to this part:

*Agent* means any individual or other person with the actual authority of, with the apparent authority of, or designated by a person subject to FOGRMA who acts or who, with apparent authority, appears to act on behalf of the person subject to FOGRMA.

*ALJ* means an Administrative Law Judge in the DCHD.

*Assessment* means a civil penalty set out in a FCCP or ILCP; it includes a dollar amount per violation for each day the violation continues. In this part "assessment" is used consistent with 30 U.S.C. 1719(k), but is distinguishable from "assessment" as defined in 30 U.S.C. 1702(19) and used in 30 U.S.C. 1702(25). Correspondence that we send to you to update you on the amount of penalties accrued or outstanding under a FCCP or ILCP we previously served on you is not an assessment.

*DCHD* means the Departmental Cases Hearings Division, Office of Hearings and Appeals.

*FCCP* means a Failure to Correct Civil Penalty Notice; it assesses a civil penalty if you fail to correct a violation identified in a NONC.

*FOGRMA* means the Federal Oil and Gas Royalty Management Act.

*IBLA* means the Interior Board of Land Appeals, Office of Hearings and Appeals.

*ILCP* means an Immediate Liability Civil Penalty Notice; it identifies a violation and assesses a civil penalty for the violation even if you have not been provided prior notice and an opportunity to correct the violation.

*Information* means any data that you provide to an ONRR data system, or otherwise provide to us for our official records, including, but not limited to, any report, notice, affidavit, record, data, or document that you provide to us, any document that you provide to us in response to our request, and any other written information that you provide to us.

*Knowingly or willfully* includes an act or failure to act committed with:

- (i) Actual knowledge;  
 (ii) Deliberate ignorance; or  
 (iii) Reckless disregard of the facts surrounding the event or violation; it requires no proof of specific intent to defraud.

*Maintains false, inaccurate, or misleading information* includes providing information to an ONRR data system, or otherwise to us for our official records, and later learning that the information that you provided was false, inaccurate, or misleading, and you do not correct that information or other information that you provided to us that you know or should know contains the

same false, inaccurate, or misleading information.

*NONC* means a Notice of Noncompliance; it identifies a violation, specifies the corrective action that must be taken, and establishes the deadline for such action to avoid a civil penalty.

*Notice* means a NONC, FCCP, or ILCP, as defined in this section.

*OCS* means the Outer Continental Shelf.

*ONRR* means the Office of Natural Resources Revenue (also referred to in the regulations as "we," "our," and "us," as appropriate).

*RSFA* means the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

*Submits false, inaccurate, or misleading information* means that you provide false, inaccurate, or misleading information to an ONRR data system, or otherwise to us for our official records.

*Violation* means any action or failure to take action that is inconsistent with the provisions of FOGRMA, RSFA, a regulation promulgated under either of those Acts, or a Federal or Indian lease as defined by FOGRMA, as amended.

*You (I)* means the recipient of a NONC, FCCP, or ILCP.

##### § 1241.4 How will ONRR serve a Notice?

(a) We will serve a NONC, FCCP, or ILCP as set out in FOGRMA section 109(h) (30 U.S.C. 1719) by registered mail or personal service to the addressee of record or alternate, as identified in 30 CFR 1218.540.

(b) We will consider the Notice served on the date when it was delivered to the addressee of record or alternate, as identified in 30 CFR 1218.540.

##### § 1241.5 Which ONRR enforcement actions are subject to a hearing?

Except as provided by § 1241.6, you may request a hearing on:

- (a) A NONC to contest your liability.  
 (b) A FCCP to contest only the civil penalty amount, unless a request for hearing was filed under paragraph (a) of this section; in which case, the requests for hearing filed under paragraph (a) and this paragraph (b) will be combined into a single proceeding.

(c) An ILCP to contest your liability, civil penalty amount, or both. If your hearing request does not state whether you are contesting your liability for the ILCP or the penalty amount, or both, you will be deemed to have requested a hearing only on the penalty amount.

(d) You may request a hearing even if you correct the violation identified in a Notice.

##### § 1241.6 Which ONRR enforcement actions are not subject to a hearing?

You may not request a hearing on:

(a) Your liability under an order identified in a NONC, FCCP, or ILCP if you did not appeal in a timely manner the order under 30 CFR part 1290 or you appealed in a timely manner the order under 30 CFR part 1290 but have exhausted your appeal rights.

(b) Any correspondence that we send to you to update you on the amount of penalties accrued or outstanding under a FCCP or ILCP ONRR previously served on you.

**§ 1241.7 How do I request a hearing on the record on a Notice?**

You may request a hearing on the record before an ALJ on a Notice by filing a request within 30 days of the date of service of the Notice with the DCHD, at the address indicated in your Notice. The 30 day-period to request a hearing on the record will not be extended for any reason.

**§ 1241.8 How will DCHD conduct the hearing on the record?**

If you request a hearing on the record under § 1241.7, an ALJ will conduct the hearing under the provisions of 43 CFR 4.420 through 4.438, except when the provisions are inconsistent with the provisions of this part. We have the burden of proving, by a preponderance of the evidence, the fact of the violation and the basis for the amount of the civil penalty. Upon completion of the hearing, the ALJ will issue a decision according to the evidence presented and the applicable law.

**§ 1241.9 May I appeal the ALJ's decision?**

If you are adversely affected by the ALJ's decision, you may appeal that decision to the IBLA under 43 CFR part 4, subpart E.

**§ 1241.10 May I seek judicial review of the IBLA decision?**

You may seek judicial review of the IBLA decision under 30 U.S.C. 1719(j) in Federal District Court. You must file a suit for judicial review in Federal District Court within 90 days after the final IBLA decision.

**§ 1241.11 Does my hearing request affect a penalty?**

(a) If you do not correct the violation identified in a Notice, any penalty will continue to accrue, even if you request a hearing, except as provided in paragraph (b) of this section.

(b) *Standards and procedures for obtaining a stay.* If you request in a timely manner a hearing on a Notice, you may petition the DCHD to stay the assessment or accrual of penalties pending the hearing on the record and a decision by the ALJ under § 1241.8.

(1) You must file your petition for stay within 45 calendar days after you receive a Notice.

(2) You must file your petition for stay under 43 CFR 4.21(b), in which event:

(i) We may file a response to your petition within 30 days after service.

(ii) The 45-day requirement set out in 43 CFR 4.21(b)(4) for the ALJ to grant or deny the petition does not apply.

(3) If the ALJ determines that a stay is warranted, the ALJ will issue an order granting your petition, subject to your satisfaction of the following condition: within 10 days of your receipt of the order, you must post a bond or other surety instrument using the same standards and requirements as prescribed in 30 CFR part 1243, subpart B; or demonstrate financial solvency using the same standards and requirements as prescribed in 30 CFR part 1243, subpart C, for any specified, unpaid principal amount that is the subject of the Notice, any interest accrued on the principal, and the amount of any penalty set out in a Notice accrued up to the date of the ALJ order conditionally granting your petition.

(4)(i) If you satisfy the condition to post a bond or surety instrument or demonstrate financial solvency under paragraph (b)(3) of this section, the accrual of penalties will be stayed effective on the date of the ALJ's order conditionally granting your petition.

(ii) If you fail to satisfy the condition to post a bond or surety instrument or demonstrate financial solvency under paragraph (b)(3) of this section, penalties will continue to accrue.

(5) Notwithstanding paragraphs (b)(1), (2), (3), and (4) of this section, if the ALJ determines that your defense to a Notice is frivolous, and a civil penalty is owed, you will forfeit the benefit of the stay, and penalties will be calculated as if no stay had been granted.

**Subpart B—Notices of Noncompliance and Civil Penalties**

**Penalties With a Period To Correct**

**§ 1241.50 What may ONRR do if I violate a statute, regulation, order, or lease term relating to a lease subject to this part?**

If we determine that you have not followed any requirement of a statute, regulation, order, or a term of a lease subject to this part, we may serve you with a NONC explaining:

(a) What the violation is.

(b) How to correct the violation to avoid a civil penalty.

(c) That you have 20 days after the date on which you are served the NONC to correct the violation, unless the NONC specifies a longer period.

**§ 1241.51 What if I correct the violation identified in a NONC?**

If you correct all of the violations that we identified in the NONC within 20 days after the date on which you are served the NONC, or any longer period for correction that the NONC specifies, we will close the matter and will not assess a civil penalty. However, we will consider these violations as part of your history of noncompliance for future penalty assessments under § 1241.70(a)(2).

**§ 1241.52 What if I do not correct the violation identified in a NONC?**

(a) If you do not correct all of the violations that we identified in the NONC within 20 days after the date on which you are served the NONC, or any longer period that the NONC specifies for correction, then we may send you an FCCP.

(1) The FCCP will state the amount of the penalty that you must pay. The penalty will:

(i) Begin to run on the day on which you were served with the NONC.

(ii) Continue to accrue for each violation identified in the NONC until it is corrected.

(2) The penalty may be up to \$1,177 per day for each violation identified in the NONC that you have not corrected.

(b) If you do not correct all of the violations identified in the NONC within 40 days after you are served the NONC, or within 20 days following the expiration of any period longer than 20 days that the NONC specifies for correction, then we may increase the penalty to a maximum of \$11,774 per day for each violation identified in the NONC that you have not corrected. The increased penalty will:

(1) Begin to run on the 40th day after the date on which you were served the NONC, or on the 20th day after the expiration of any period longer than 20 days that the NONC specifies for correction.

(2) Continue to accrue for each violation identified in the NONC until it is corrected.

**Penalties Without a Period To Correct**

**§ 1241.60 Am I subject to a penalty without prior notice and an opportunity to correct?**

(a) We may assess a penalty for a violation identified in paragraph (b) of this section without prior notice or first giving you an opportunity to correct the violation. We will inform you of a violation without a period to correct by issuing an ILCP explaining:

(1) What the violation is.

(2) The amount of the civil penalty. The civil penalty for such a violation

begins running on the day it was committed.

(b) ONRR may assess a civil penalty of up to:

(1) \$23,548 per day, per violation for each day that the violation continues if you:

(i) Knowingly or willfully fail to make any royalty payment by the date specified by statute, regulation, order, or a term of the lease.

(ii) Fail or refuse to permit lawful entry, inspection, or audit, including refusal to keep, maintain, or produce documents.

(2) \$58,871 per day, per violation for each day that the violation continues if you knowingly or willfully prepare, maintain, or submit a false, inaccurate, or misleading report, notice, affidavit, record, data, or any other written information.

(c) We may use any information as evidence that you knowingly or willfully committed a violation, including:

(1) The act and failure to act of your employee or agent.

(2) An email indicating your concurrence with an issue.

(3) An order that you did not appeal or an order, NONC, or ILCP for which no further appeal is available.

(4) Any written or oral communication, identifying a violation which:

(i) You acknowledge as true and fail to correct.

(ii) You fail to or cannot further appeal and fail to correct.

(iii) You correct, but you subsequently commit the same violation.

### **Subpart C—Penalty Amount, Interest, and Collections**

#### **§ 1241.70 How does ONRR decide the amount of the penalty to assess?**

(a) ONRR will determine the amount of the penalty to assess by considering:

(1) The severity of the violation.

(2) Your history of noncompliance.

(3) The size of your business. To determine the size of your business, we may consider the number of employees in your company, parent company or companies, and any subsidiaries and contractors.

(b) We will not consider the royalty consequence of the underlying violation when determining the amount of the civil penalty for a violation under § 1241.50 or § 1241.60(b)(1)(ii) or (b)(2).

(c) We will post the FCCP and ILCP assessment matrices and any adjustments to the matrices on our Web site.

#### **§ 1241.71 Do I owe interest on both the penalty amount and any underlying underpayment or unpaid debt?**

(a) A penalty under this part is in addition to interest that you may owe on any underlying underpayment or unpaid debt.

(b) If you do not pay the penalty amount by the due date in the bill accompanying the FCCP or ILCP, you will owe late payment interest on the penalty amount under 30 CFR 1218.54 from the date when the civil penalty payment became due under § 1241.72 until the date when you pay the civil penalty amount.

#### **§ 1241.72 When must I pay the penalty?**

(a) If you do not request a hearing on a FCCP or ILCP under this part, you must pay the penalty amount by the due date specified in the bill accompanying the FCCP or ILCP.

(b) If you request a hearing on a FCCP or ILCP under this part, the ALJ affirms the civil penalty; and

(1) You do not appeal the ALJ's decision to the IBLA under § 1241.9, you must pay the civil penalty amount determined by the ALJ within 30 days of the ALJ's decision; or

(2) You appeal the ALJ's decision to the IBLA under § 1241.9, and IBLA affirms a civil penalty; and

(i) You do not seek judicial review of the IBLA's decision under 30 U.S.C. 1719(j), you must pay the civil penalty amount that IBLA determines within 120 days of the IBLA decision; or

(ii) You seek judicial review of the IBLA decision, and a court of competent jurisdiction affirms the penalty, you must pay the penalty assessed within 30 days after the court enters a final non-appealable judgment.

#### **§ 1241.73 May ONRR reduce my penalty once it is assessed?**

ONRR's Director or his or her delegate may compromise or reduce a civil penalty assessed under this part.

#### **§ 1241.74 How may ONRR collect my penalty?**

(a) If you do not pay a civil penalty amount by the date when payment is due under § 1241.72, we may use all available means to collect the penalty, including but not limited to:

(1) Requiring the lease surety, for an amount owed by a lessee, to pay the penalty.

(2) Deducting the amount of the penalty from any sum that the United States owes you.

(3) Referring the debt to the Department of the Treasury for collection under 30 CFR part 1218, subpart J.

(4) Using the judicial process to compel your payment under 30 U.S.C. 1719(k).

(b) If ONRR uses the judicial process to compel your payment, or if you seek judicial review under 30 U.S.C. 1719(j), and the court upholds the assessment of a penalty, the court will have jurisdiction to award the penalty amount assessed plus interest from the date of the expiration of the 90-day period referred to in 30 U.S.C. 1719(j).

[FR Doc. 2016-17598 Filed 7-29-16; 8:45 am]

BILLING CODE 4335-30-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 100**

[Docket No. USCG-2013-1018]

#### **Special Local Regulation; Seattle Seafair Unlimited Hydroplane Race, Lake Washington, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Seattle Seafair Unlimited Hydroplane Race special local regulation on Lake Washington, WA from 8 a.m. on August 2, 2016 through 11 p.m. on August 7, 2016 during hydroplane race times. This action is necessary to ensure public safety from the inherent dangers associated with high-speed races while allowing access for rescue personnel in the event of an emergency. During the enforcement period, no person or vessel will be allowed to enter the regulated area without the permission of the Captain of the Port, Puget Sound, the on-scene Patrol Commander, or a designated representative.

**DATES:** The regulations in 33 CFR 100.1301 will be effective from 8 a.m. on August 2, 2016 through 11 p.m. on August 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email LT Kate Haseley, Sector Puget Sound Waterways Management Division, Coast Guard; telephone (206) 217-6051, email [SectorPugetSoundWWM@uscg.mil](mailto:SectorPugetSoundWWM@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

The Coast Guard will enforce the Seattle Seafair Unlimited Hydroplane Race special local regulation in 33 CFR 100.1301 from 8 a.m. on August 2, 2016 through 11 p.m. on August 7, 2016.

Under the provisions of 33 CFR 100.1301, the Coast Guard will restrict general navigation in the following area: All waters of Lake Washington bounded by the Interstate 90 (Mercer Island/Lacey V. Murrow) Bridge, the western shore of Lake Washington, and the east/west line drawn tangent to Bailey Peninsula and along the shoreline of Mercer Island.

The regulated area has been divided into two zones. The zones are separated by a line perpendicular from the I-90 Bridge to the northwest corner of the East log boom and a line extending from the southeast corner of the East log boom to the southeast corner of the hydroplane race course and then to the northerly tip of Ohlers Island in Andrews Bay. The western zone is designated Zone I, the eastern zone, Zone II. (Refer to NOAA Chart 18447).

The Coast Guard will maintain a patrol consisting of Coast Guard vessels, assisted by Coast Guard Auxiliary vessels, in Zone II. The Coast Guard patrol of this area is under the direction of the Coast Guard Patrol Commander (the "Patrol Commander"). The Patrol Commander is empowered to control the movement of vessels on the racecourse and in the adjoining waters during the periods this regulation is in effect. The Patrol Commander may be assisted by other federal, state and local law enforcement agencies.

Only vessels authorized by the Patrol Commander may be allowed to enter Zone I during the hours this regulation is in effect. Vessels in the vicinity of Zone I shall maneuver and anchor as directed by the Patrol Commander.

During the times in which the regulation is in effect, the following rules shall apply:

(1) Swimming, wading, or otherwise entering the water in Zone I by any person is prohibited while hydroplane boats are on the racecourse. At other times in Zone I, any person entering the water from the shoreline shall remain west of the swim line, denoted by buoys, and any person entering the water from the log boom shall remain within ten (10) feet of the log boom.

(2) Any person swimming or otherwise entering the water in Zone II shall remain within ten (10) feet of a vessel.

(3) Rafting to a log boom will be limited to groups of three vessels.

(4) Up to six (6) vessels may raft together in Zone II if none of the vessels are secured to a log boom. Only vessels authorized by the Patrol Commander, other law enforcement agencies or event sponsors shall be permitted to tow other watercraft or inflatable devices.

(5) Vessels proceeding in either Zone I or Zone II during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, seven (07) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(6) Upon completion of the daily racing activities, all vessels leaving either Zone I or Zone II shall proceed at speeds of seven (07) miles per hour or less. The maximum speed may be reduced at the discretion of the Patrol Commander.

(7) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the Patrol Commander shall serve as signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The Captain of the Port may be assisted by other federal, state and local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1301 and 5 U.S.C. 552(a). If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: July 20, 2016.

**M.W. Raymond,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 2016-18127 Filed 7-29-16; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2016-0635]

#### Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulation; modification.

**SUMMARY:** The Coast Guard has modified a temporary deviation from the operating schedule that governs Seattle Department of Transportation's (SDOT) Fremont Bridge, across the Lake Washington Ship Canal, mile 2.6, at Seattle, WA. The modified deviation is necessary to accommodate heavy pedestrian and cycling traffic across the

bridge during the 'Fun Ride' event and Lake Union 10K Run event. This modified deviation allows the bridge to remain in the closed-to-navigation position and need not open to maritime traffic.

**DATES:** This deviation is effective from 7:30 a.m. to 8:30 a.m. and 10:30 a.m. to 12:30 p.m. on August 14, 2016.

**ADDRESSES:** The docket for this deviation, [USCG-2016-0635] is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206-220-7282, email [d13-pf-d13bridges@uscg.mil](mailto:d13-pf-d13bridges@uscg.mil).

**SUPPLEMENTARY INFORMATION:** On July 15, 2016, the Coast Guard published a temporary deviation entitled "Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA" in the **Federal Register** (81 FR 45971). This document was necessary for Seattle Department of Transportation (SDOT) to temporarily deviate from the operating schedule for the Fremont Bridge, mile 2.6, crossing the Lake Washington Ship Canal at Seattle, WA. This modification adds an additional closure hour on August 14, 2016 for these events. The deviation is necessary to accommodate heavy pedestrian and cycling traffic across the bridge during the 'Fun Ride' event and Lake Union 10K Run event. To facilitate these events, the double bascule draw of the bridge will not open for vessel traffic during the effective date and times. The Fremont Bridge provides a vertical clearance of 14 feet (31 feet of vertical clearance for the center 36 horizontal feet) in the close-to-navigation position. The clearance is referenced to the mean water elevation of Lake Washington. The normal operating schedule for the Fremont Bridge is found at 33 CFR 117.1051. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft. No early Sunday morning bridge opening requests have been received during August for the Fremont Bridge in the last five years.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at anytime. The bridge will be able to open for emergencies, and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and

Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 26, 2016.

**Steven M. Fischer,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2016-18080 Filed 7-29-16; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 36

**RIN 1801-AA16**

**[Docket ID ED-2015-OGC-0051]**

#### **Adjustment of Civil Monetary Penalties for Inflation**

**AGENCY:** Department of Education.

**ACTION:** Interim final regulations.

**SUMMARY:** The Department of Education (Department) issues these interim final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act).

**DATES:** These regulations are effective August 1, 2016. In this rule, the adjusted civil penalty amounts are applicable only to civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the date of enactment of the 2015 Amendments. Therefore, violations occurring on or before November 2, 2015, and assessments made prior to August 1, 2016 whose associated violations occurred after November 2, 2015, will continue to be subject to the civil monetary penalty amounts set forth in the Department's existing regulations at 34 CFR 36.2 (or as set forth by statute if the amount has not yet been adjusted by regulation).

**FOR FURTHER INFORMATION CONTACT:**

Levon Schlichter, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW., Room 6E235, Washington, DC 20202-2241. Telephone: (202) 453-6387 or by email: [levon.schlichter@ed.gov](mailto:levon.schlichter@ed.gov).

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

**SUPPLEMENTARY INFORMATION:**

**Background:** The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461 note) provides for the regular evaluation of civil monetary penalties (CMPs) to ensure that they continue to maintain their deterrent value. The Inflation Adjustment Act required that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every four years thereafter. The Department published its most recent cost adjustment to each CMP in the **Federal Register** on October 2, 2012 (77 FR 60047), and those adjustments became effective on the date of publication.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (section 701 of Pub. L. 114-74), which further amended the Inflation Adjustment Act, to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

*The 2015 Act requires agencies to:* (1) Adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final rulemaking (IFR); and (2) make subsequent annual adjustments for inflation. Catch-up adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year the penalty was last adjusted by a statute other than the Inflation Adjustment Act, and the October 2015 CPI-U. Annual inflation adjustments are based on the percent change between the October CPI-U preceding the date of each statutory adjustment, and the prior year's October CPI-U.<sup>1</sup>

The Department is required to publish an IFR with the initial penalty adjustment amounts by July 1, 2016, and the new penalty levels must take effect no later than August 1, 2016. These adjustments will apply to all civil monetary penalties covered by the Inflation Adjustment Act.

<sup>1</sup> If a statute that created a penalty is amended to change the penalty amount, the Department does not adjust the penalty in the year following the adjustment.

A CMP is defined in the statute as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The formula for the amount of a CMP inflation adjustment is prescribed by law, as explained in OMB Memorandum M-16-06 (February 24, 2016), and is not subject to the exercise of discretion by the Secretary of Education (Secretary). Under the 2015 Act, the Department must use, as the baseline for adjusting the CMPs in this IFR, the CMP amounts as they were most recently established or adjusted under a provision of law other than by the Inflation Adjustment Act. In accordance with the 2015 Act, we are not using the amounts set out in 34 CFR part 36 in 2012 in the formula used to adjust for inflation because those CMP amounts were updated pursuant to the Inflation Adjustment Act.<sup>2</sup> Instead, the baselines we are using are the amounts set out most recently in each of the statutes that provide for civil penalties. Using these statutory CMPs, we have determined which year those amounts were originally enacted by Congress (or the year the statutory amounts were last amended by the statute that established the penalty) and used the annual inflation adjustment multiplier corresponding to that year from Table A of OMB Memorandum M-16-06. We then rounded the number to the nearest dollar and checked, as required by the Inflation Adjustment Act, to see if that adjusted amount exceeded 150 percent of the CMP amount that was established under 34 CFR part 36, and in effect on November 2, 2015. If any of the amounts exceeded 150 percent, we are required to use the lesser amount (the 150 percent amount). All of the adjusted amounts were less than 150 percent so we did not have to replace any of the amounts we calculated using the multiplier from Table A of OMB Memorandum M-16-06 with the lesser amount.

<sup>2</sup> As originally enacted, the Inflation Adjustment Act limited the first increased adjustment, which we made through regulation, to a maximum of 10 percent. This 10 percent limitation affected the increase we last made in the 2012 rulemaking. In the 2015 Act, Congress determined that limiting the first adjustments to 10 percent reduced the effectiveness of the penalties, so the 2015 Act requires us to use the statutory amounts as our baseline.

### *The Department's Civil Monetary Penalties*

The following analysis calculates new civil monetary penalties for penalty statutes in the order in which they appear in 34 CFR 36.2. The 2015 Act provides that any increase to an agency's CMPs applies only to CMPs, including those whose associated violation predated such increase, which are assessed after the effective date of the adjustments. These regulations are effective August 1, 2016. Therefore, the adjustments made by this amendment to the Department's CMPs apply only to violations that are assessed after August 1, 2016.

*Statute:* 20 U.S.C. 1015(c)(5).

*Current Regulations:* The CMP for 20 U.S.C. 1015(c)(5) [Section 131(c)(5) of the Higher Education Act of 1965, as amended (HEA)], as last set out in statute in 1998 (Pub. Law 105-244, title I, § 101(a), Oct. 7, 1998, 112 Stat. 1602), is a fine of up to \$25,000 for failure by an IHE to provide information on the cost of higher education to the Commissioner of Education Statistics.

*New Regulations:* The new penalty for this section is \$36,256.

*Reason:* Using the multiplier for 1998 of 1.45023 from OMB Memorandum M-16-06, the new penalty is calculated as follows:  $\$25,000 \times 1.45023 = \$36,255.75$ , which makes the adjusted penalty \$36,256, when rounded to the nearest dollar.

*Statute:* 20 U.S.C. 1022d(a)(3).

*Current Regulations:* The CMP for 20 U.S.C. 1022d(a)(3) [Section 205(a)(3) of the HEA], as last set out in statute in 2008 (Pub. L. 110-315, title II, § 201(2), Aug. 14, 2008, 122 Stat. 3147), provides for a fine of up to \$27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs.

*New Regulations:* The new penalty for this section is \$30,200.

*Reason:* Using the multiplier for 2008 of 1.09819 from OMB Memorandum M-16-06, the new penalty is calculated as follows:  $\$27,500 \times 1.09819 = \$30,200.23$ , which makes the adjusted penalty \$30,200, when rounded to the nearest dollar.

*Statute:* 20 U.S.C. 1082(g).

*Current Regulations:* The CMP for 20 U.S.C. 1082(g) [Section 432(g) of the HEA], as last set out in statute in 1986 (Pub. L. 99-498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1401), provides for a fine of up to \$25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program.

*New Regulation:* The new penalty for this section is \$53,907.

*Reason:* Using the multiplier for 1986 of 2.15628 from OMB Memorandum M-16-06, the new penalty is calculated as follows:  $\$25,000 \times 2.15628 = \$53,907.00$ , which makes the adjusted penalty \$53,907, when rounded to the nearest dollar.

*Statute:* 20 U.S.C. 1094(c)(3)(B).

*Current Regulations:* The CMP for 20 U.S.C. 1094(c)(3)(B) [Section 487(c)(3)(B) of the HEA], as set out in statute in 1986 (Pub. L. 99-498, title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1488), provides for a fine of up to \$25,000 for an IHE's violation of Title IV of the HEA or its implementing regulations. Title IV authorizes various programs of student financial assistance.

*New Regulations:* The new penalty for this section is \$53,907.

*Reason:* Using the multiplier for 1986 of 2.15628 from OMB Memorandum M-16-06, the new penalty is calculated as follows:  $\$25,000 \times 2.15628 = \$53,907.00$ , which makes the adjusted penalty \$53,907, when rounded to the nearest dollar.

*Statute:* 20 U.S.C. 1228c(c)(2)(E).

*Current Regulations:* The CMP for 20 U.S.C. 1228c(c)(2)(E) [Section 429 of the General Education Provisions Act], as set out in statute in 1994 (Pub. L. 103-382, title II, § 238, Oct. 20, 1994, 108 Stat. 3918), provides for a fine of up to \$1,000 for an educational organization's failure to disclose certain information to minor students and their parents.

*New Regulations:* The new penalty for this section is \$1,591.

*Reason:* Using the multiplier for 1994 of 1.59089 from OMB Memorandum M-16-06, the new penalty is calculated as follows:  $\$1,000 \times 1.59089 = \$1,590.89$ , which makes the adjusted penalty \$1,591, when rounded to the nearest dollar.

*Statute:* 31 U.S.C. 1352(c)(1) and (c)(2)(A).

*Current Regulations:* The CMPs for 31 U.S.C. 1352(c)(1) and (c)(2)(A), as set out in statute in 1989, provide for a fine of \$10,000 to \$100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts.

*New Regulations:* The new penalties for these sections are \$18,936 to \$189,361.

*Reason:* Using the multiplier for 1989 of 1.89361 from OMB Memorandum M-16-06, the new minimum penalty is calculated as follows:  $\$10,000 \times 1.89361 = \$18,936.10$ , which makes the adjusted penalty \$18,936, when rounded to the nearest dollar. The new maximum penalty is calculated as follows:  $\$100,000 \times 1.89361 = \$189,361.00$ ,

which makes the adjusted penalty \$189,361, when rounded to the nearest dollar.

*Statute:* 31 U.S.C. 3802(a)(1) and (a)(2).

*Current Regulations:* The CMPs for 31 U.S.C. 3802(a)(1) and (a)(2), as set out in statute in 1986 (Pub. L. 99-509, title VI, § 6103(a), Oct. 21, 1986, 100 Stat. 1937), provide for a fine of up to \$5,000 for false claims and statements made to the Government.

*New Regulations:* The new penalty for this section is \$10,781.

*Reason:* Using the multiplier for 1986 of 2.15628 from OMB Memorandum M-16-06, the new penalty is calculated as follows:  $\$5,000 \times 2.15628 = \$10,781.40$ , which makes the adjusted penalty \$10,781, when rounded to the nearest dollar.

### *Executive Orders 12866 and 13563*

#### *Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities in a material way (also referred to as "economically significant" regulations);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

Based on the number and amount of penalties imposed under the CMPs amended in this IFR, we have determined that this regulatory action will have none of the economic impacts described under the Executive order. This IFR is required by statute, the adjusted CMPs are not at the Secretary's discretion, and, accordingly, this IFR does not have any of the policy impacts described under the Executive order. Because this IFR is not a significant regulatory action, it is not subject to review by OMB under section 3(f) of Executive Order 12866.



We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing this IFR as required by statute. The Secretary has no discretion to consider alternative approaches as delineated in the Executive order. Based on this analysis and the reasons stated in the preamble, the Department believes that this IFR is consistent with the principles in Executive Order 13563.

#### *Waiver of Rulemaking and Delayed Effective Date*

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the

APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). There is good cause to waive rulemaking here as unnecessary.

Rulemaking is “unnecessary” in those situations in which “the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.” *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001), quoting U.S. Department of Justice, *Attorney General’s Manual on the Administrative Procedure Act* 31 (1947) and *South Carolina v. Block*, 558 F. Supp. 1004, 1016 (D.S.C. 1983).

These regulations merely implement the statutory mandate to adjust CMPs for inflation. The regulations reflect administrative computations performed by the Department as prescribed by the statute and the Secretary has no discretion in determining the new penalties.

The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Again, because these final regulations merely implement non-discretionary administrative computations, there is good cause to make them effective on the day they are published.

#### *Regulatory Flexibility Act Certification*

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The formula for the amount of the inflation adjustments is prescribed by statute and is not subject to the Secretary’s discretion. These CMPs are infrequently imposed by the Secretary, and the regulations do not involve any special considerations that might affect the imposition of CMPs on small entities.

#### *Paperwork Reduction Act of 1995*

These regulations do not contain any information collection requirements.

#### *Intergovernmental Review*

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

#### *Assessment of Educational Impact*

Based on our own review, we have determined that this IFR does not require transmission of information that any other agency or authority of the United States gathers or makes available.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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#### **List of Subjects in 34 CFR Part 36**

Claims, Fraud, Penalties.

Dated: July 27, 2016.

**John B. King, Jr.,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary amends part 36 of title 34 of the Code of Federal Regulations as follows:

#### **PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION**

■ 1. The authority citation for part 36 is revised to read as follows:

**Authority:** 20 U.S.C. 1221e–3 and 3474; 28 U.S.C. 2461 note, as amended by § 701 of Pub. Law 114–74, unless otherwise noted.

■ 2. In § 36.1, revise the authority citation to read as follows:

##### **§ 36.1 Purpose.**

\* \* \* \* \*

(Authority: 20 U.S.C. 1221e–3 and 3474; 28 U.S.C. 2461 note, as amended by § 701 of Pub. Law 114–74.)

■ 3. Section 36.2 is amended by revising Table I and the authority citation to read as follows:

##### **§ 36.2 Penalty adjustment.**

\* \* \* \* \*



TABLE I, SECTION 36.2—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1015(c)(5) (Section 131(c)(5) of the Higher Education Act of 1965 (HEA)).	Provides for a fine, as set by Congress in 1998, of up to \$25,000 for failure by an institute of higher education to provide information on the cost of higher education to the Commissioner of Education Statistics.	\$36,256
20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA).	Provides for a fine, as set by Congress in 2008, of up to \$27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs.	30,200
20 U.S.C. 1082(g) (Section 432(g) of the HEA).	Provides for a civil penalty, as set by Congress in 1986, of up to \$25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program.	53,907
20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA).	Provides for a civil penalty, as set by Congress in 1986, of up to \$25,000 for an IHE's violation of Title IV of the HEA, which authorizes various programs of student financial assistance.	53,907
20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education Provisions Act).	Provides for a civil penalty, as set by Congress in 1994, of up to \$1,000 for an educational organization's failure to disclose certain information to minor students and their parents.	1,591
31 U.S.C. 1352(c)(1) and (c)(2)(A) .....	Provides for a civil penalty, as set by Congress in 1989, of \$10,000 to \$100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts.	18,936 to 189,361
31 U.S.C. 3802(a)(1) and (a)(2) .....	Provides for a civil penalty, as set by Congress in 1986, of up to \$5,000 for false claims and statements made to the Government.	10,781

(Authority: 20 U.S.C. 1221e-3 and 3474; 28 U.S.C. 2461 note, as amended by § 701 of Pub. Law 114-74).

[FR Doc. 2016-18179 Filed 7-29-16; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### 34 CFR Chapter III

[Docket ID ED-2016-OSERS-0022; CFDA Number: 84.421B.]

#### Final Priorities, Requirements, and Definition—Disability Innovation Fund—Transition Work-Based Learning Model Demonstrations

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Final priorities, requirements, and definition.

**SUMMARY:** The Assistant Secretary for Special Education and Rehabilitative Services announces priorities, requirements, and a definition under the Disability Innovation Fund (DIF) Program. The Assistant Secretary may use these priorities, requirements, and definition for competitions in fiscal year (FY) 2016 and later years. The Assistant Secretary takes this action to identify, develop, implement, and evaluate work-based learning models that are supported by evidence and will help students with disabilities prepare for postsecondary education and competitive integrated employment. The models must be delivered through

a coordinated system of transition services.

**DATES:** The priorities, requirements, and definition are effective October 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** RoseAnn Ashby, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue SW., Room 5057, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7258, or by email: [roseann.ashby@ed.gov](mailto:roseann.ashby@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

**Purpose of Program:** The purpose of the DIF Program, as provided by the Consolidated Appropriations Act, 2015 (Pub. L. 113-235), is to support innovative activities aimed at improving the outcomes of “individuals with disabilities,” as defined in section 7(20)(A) of the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 705(20)(A)).

**Program Authority:** Consolidated Appropriations Act, 2015 (Pub. L. 113-235).

We published a notice of proposed priorities, requirements, and definitions (NPP) for this competition in the **Federal Register** on April 13, 2016 (81 FR 21808). That notice contained background information and our reasons for proposing the particular priorities, requirements, and definitions.

**Public Comment:** In response to our invitation in the NPP, 10 parties submitted comments on the proposed priorities, requirements, and definitions. We group major issues according to subject. Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the priorities.

**Analysis of Comments and Changes:** An analysis of the comments and of any changes in the priorities, requirements, and definitions since publication of the NPP follows.

#### Priority 1

##### General

**Comment:** None.

**Discussion:** Upon review of the requirements for proposed Priority 1, we became aware that to ensure the replicability of the project model, we needed to clarify that the proposed project design must be replicable in similar contexts and settings and implemented at multiple local sites.

**Changes:** We have specified in the first sentence in paragraph (a) of the requirements for Priority 1 that the proposed project design must be replicable in similar contexts and settings. For emphasis, we also moved the requirement that the model be implemented at multiple local sites from the end of proposed paragraph (b) to the end of paragraph (a). In addition,

we clarified in paragraph (a) of the requirements of Priority 1 that evidence of strong theory is required for the project design.

*Comment:* None.

*Discussion:* Upon review of Priority 1, we became aware that we needed to eliminate possible confusion about what is meant by the word “effective” and more accurately reflect the purpose of Priority 1.

The term “effective” in the context of education research and evaluation usually means that a high-quality study was conducted to assess the effectiveness of an intervention. While the purpose of Priority 1 is to build the evidence base and identify and demonstrate work-based learning interventions that are supported by evidence for students with disabilities, the priority does not require that the proposed interventions to be implemented under the project’s model be supported by a specific level of effectiveness determined by a high-quality study. Accordingly, we believe that the term “supported by evidence” more accurately reflects the intent of the priority.

*Changes:* We have replaced the word “effective” with “supported by evidence” throughout the priority and requirements when referring to the applicant’s proposed strategies, model, or project.

*Comments:* None.

*Discussion:* Upon further review of the notice, we removed the second sentence in paragraph (i)(2) of Requirements for Priority 1 because the summative evaluation is not an effectiveness evaluation and would not statistically prove the effectiveness of the model. Also, the intent of this sentence was redundant with paragraph (j) of the requirements for Priority 1.

*Changes:* We deleted the second sentence in paragraph (i)(2) under the Requirements for Priority 1.

### Eligible Applicants and Partners

*Comment:* One commenter stated that eligible applicants should include secondary schools and school districts. The commenter indicated that secondary schools are developing many great programs to provide career pathways and successful transitions to college and careers for students with disabilities.

*Discussion:* We recognize the importance of the partnerships between State vocational rehabilitation (VR) agencies and secondary schools or school districts in implementing strategies designed to successfully transition students with disabilities to college and careers. However, the

purpose of Priority 1 is to identify models that State VR agencies will be able to replicate. We believe that the best way to accomplish this objective is to require the applicant to be a State VR agency working in collaboration with other key partners. This will allow the VR agency to make use of the expertise and experience of multiple partners and to implement models in multiple settings. Each applicant is required to develop a partnership, and chief among these partners are local educational agencies (LEAs).

*Changes:* None.

*Comment:* One commenter asked that the Department include national and community-based nonprofit organizations as eligible applicants. Although work-based learning is carried out at the local level, the commenter indicated that the bulk of the work—recruiting individuals with disabilities, connecting individuals to community work-based learning experiences, and providing follow-along supports—is actually done by service providers. In addition, the commenter stated that limiting eligible applicants to State VR agencies would narrow the ability of the Department to evaluate specific strategies with different populations in different parts of the country. The commenter explained that a national organization could, for example, operate a multi-community, multi-State demonstration to effectively evaluate work-based learning strategies on a large and diverse scale.

*Discussion:* We recognize the important role that service providers play in facilitating and supporting work-based learning experiences in the community. Nevertheless, as discussed earlier, we have decided to limit eligible applicants to State VR agencies because the purpose of Priority 1 is to identify models that State VR agencies will be able to replicate. Limiting applicants to State VR agencies will not narrow the ability of the Department to evaluate specific strategies with different populations in different parts of the country. Rather than having one national grant with multiple local sites, we elected to have multiple grants, each of which may propose variations in the evaluations conducted. These may require different methodologies and may lead to different, but nonetheless comparable, findings for specific populations in a variety of contexts.

*Changes:* None.

*Comment:* Given the emphasis on coordinated systems, interagency collaboration, and effective intervention at an individual and local level, one commenter asked whether the Department anticipates funding projects

at a local or State level. The commenter further asked whether the Department will fund multiple-State consortia in this competition.

*Discussion:* The Department understands the importance of coordinated systems, interagency collaboration, and effective intervention at the individual, local, and State levels. While the eligible applicant is the State VR agency, the projects themselves would be carried out at the local level in collaboration with LEAs or, where appropriate, State educational agencies (SEAs) and other local partners. Given the limited funds that are available for this competition, we will only be able to support a small number of projects, depending on their scope and intensity. Funding multiple-State consortia would further limit the number of projects awarded and the number and variety of work-based learning models that they will produce.

*Changes:* None.

*Comment:* One commenter recommended that the required partners specifically be expanded to include disability service providers. The commenter listed several places in the requirements for Priority 1 where the term “disability service providers” should be included because the commenter wanted disability service providers to be involved in as many aspects of the project as possible.

*Discussion:* We recognize the important role that disability service providers and other community service providers play in assisting students with disabilities to achieve their educational and employment goals. Thus, the requirement to establish partnerships in developing and implementing a project’s model in paragraph (c) of the requirements for Priority 1 includes “providers or other agencies that are critical to the development of work-based learning experiences in integrated settings for students with disabilities.” However, we believe that applicants should have the flexibility to determine which providers these are, as well as the extent to which disability service providers or other agencies are critical to the development of work-based learning experiences in the community.

*Changes:* None.

### Target Population

*Comment:* One commenter asked for clarification as to how Priority 1 will address the needs of out-of-school youth and young adults.

*Discussion:* The focus of this priority is students with disabilities. We believe that out-of-school youth and young adults would benefit from successful work-based learning opportunities that

are developed and evaluated through these priorities; however, the narrower scope of these models, focusing specifically on students with disabilities, will help to ensure the rigorous evaluation of the models.

*Changes:* None.

*Comment:* One commenter requested that the Department revise Priority 1 to require applicants to develop and implement project designs that improve outcomes for students with disabilities, including low-incidence populations such as students who are deaf or hard of hearing. The commenter would also establish partnerships with entities or specific individuals with expertise in developing, evaluating, and disseminating innovative strategies for serving individuals from low-incidence populations, including students who are deaf or hard of hearing.

*Discussion:* The Department appreciates the commenter's interest in ensuring that the projects funded under this priority are designed to address work-based learning experiences for students with low-incidence disabilities. Nothing precludes an applicant from proposing to serve individuals from low-incidence populations, such as students who are deaf or hard of hearing. However, the Department declines to require all applicants to design projects to serve any specific disability population or place greater importance on serving one population over another under these priorities.

*Changes:* None.

### Work-based Learning Experiences

*Comment:* One commenter recommended that work performed through work-based learning experiences be financially compensated. For example, the commenter stated that internships and apprenticeships should be paid work experiences.

*Discussion:* We are aware that research in this field indicates that paid work experiences result in better employment outcomes for youth with disabilities than do unpaid work experiences. Therefore, paragraph (e) of the requirements for Priority 1 requires that at least one of a student's work experiences be a paid experience. While we encourage grantees to arrange for paid work experiences whenever possible, we do not want to preclude a grantee from providing an unpaid work-based learning experience that would be beneficial and appropriate to the student's goals, particularly in instances where a paid work experience is unavailable.

*Changes:* None.

*Comment:* One commenter asserted that the proposed requirements for Priority 1 should include an increased emphasis on engaging people with disabilities in innovation, similar to investments in science, technology, engineering, and mathematics (STEM) skills, such as "creativity/making" skills and entrepreneurial skills.

*Discussion:* We agree that students with disabilities should be exposed to a wide variety of work-based learning experiences, including those in innovative fields (*i.e.*, STEM) and those involving entrepreneurship skills. Work-based learning experiences supported under this priority should take into consideration the student's career interests and goals, which may include some of the innovative fields and entrepreneurship skills that the commenter described, as well as information about labor market demand and career pathways. We disagree with the commenter, however, that we should emphasize innovation and entrepreneurship above other areas of career focus because that would unnecessarily limit both the scope of the projects proposed and the work-based learning experiences available to students with disabilities.

*Changes:* None.

*Comment:* One commenter asserted that it is critically important that any work-based learning program funded and evaluated by the Department include access to programs that ensure that work disincentives created by receiving benefits and assistance under Supplemental Security Income or Social Security Disability Insurance do not prevent young adults with disabilities from seeking employment.

*Discussion:* We agree that a grantee may implement strategies or activities that address potential work disincentives that discourage a student with a disability from seeking employment. Nothing in Priority 1 would preclude an applicant from forming partnerships with other providers or programs that work in this area.

*Changes:* None.

*Comment:* One commenter requested that instead of including transportation as an optional support service in paragraph (g) of the requirements for Priority 1, the Department require grantees to provide transportation education and travel training within their demonstrations. The commenter stated that adding a specific project requirement for transportation education would ensure that individuals participating in the demonstration projects have access to and know how to use transportation,

both in the short-term (during their work-based learning opportunities) and in the long-term (when they transition into employment or post-secondary education). The commenter added that in the explanatory statement accompanying the Consolidated Appropriations Act, 2015, Congress highlighted the importance of transportation in transition outcomes and directed the Department to collaborate with transportation experts and implement transportation strategies.

*Discussion:* The Department agrees that transportation services, including education and travel training, are important services and can help many students with disabilities succeed in work-based learning. Transportation services are not optional, as the commenter suggested. Paragraph (g) of the requirements for Priority 1 requires the applicant to identify and provide support services, including transportation services, needed to ensure the student's success in participating in work-based learning experiences. The phrase "as appropriate" in the context of this requirement does not make a project's provision of transportation services optional. Rather, we recognize that not all project participants will require transportation services or the same types of transportation services. Projects are required to provide transportation services to all students with disabilities who may require such services to be successful in their work-based learning experiences. However, to address the commenters' concerns, we have modified paragraph (g) to make it clear that transportation services may include transportation education and travel training.

*Changes:* We have modified paragraph (g) in the requirements for Priority 1 to include transportation education and travel training as examples of transportation services that may be provided to ensure the student's success in participating in work-based learning experiences.

### Other

*Comment:* One commenter expressed concerns about the scope of the data required to be collected and specifically requested that data be collected on the type of assistive technology used by participants and the assistive technologies requested but not acquired.

*Discussion:* We agree that assistive technology allows many students with disabilities to achieve their education and employment goals and that providing access to assistive technology is a necessary element of any transition model. In recognition of assistive

technology's importance, paragraph (h) of the requirements for Priority 1 requires the project to identify and provide or arrange for accommodations or assistive technology needed to ensure the student's success in participating in work-based learning experiences. The purpose of these priorities is to evaluate the extent to which the project's model of coordinated work-based learning practices and strategies helps ensure that students with disabilities are prepared for postsecondary education and competitive integrated employment. Thus, we would expect grantees to document the services and supports provided to project participants, including the provision of assistive technology. However, we are not requiring grantees to evaluate the use of specific assistive technology because we expect the types of assistive technology used will vary with the needs of project participants. Therefore, there is no need to increase the scope of the required data collection described in paragraph (j) of Priority 1 to document whether the assistive technology requested by participants was acquired.

*Changes:* None.

*Comment:* One commenter asked that the Department make outcome data aggregated from the transition work-based learning model demonstrations publicly available so researchers and service providers nationwide can benefit from and create new best-practice strategies from this relevant information. This commenter observed that the DIF-funded demonstrations will represent one of the most significant and coordinated efforts to study models supported by evidence to improve transition outcomes.

*Discussion:* We agree with the commenter and will require grantees to make outcome data available to the Department in order to publish such data on the National Clearinghouse of Rehabilitation Training Materials (NCRTM) and other publicly available sources so that successful practices may be shared and available for replication.

*Changes:* We have added a new paragraph (k) to the requirements for Priority 1 to require grantees to provide outcome data to the Department for publication through the NCRTM.

### **Priorities 2 and 3**

*Comment:* None.

*Discussion:* Upon review of Priority 2, we became aware that we needed to clarify the requirement that at least one component of the proposed project must be supported by evidence of promise.

*Change:* We have revised Priority 2 by requiring evidence of promise for at least one key component and at least

one relevant outcome in the logic model for their proposed project and made conforming changes to the application requirements.

*Comment:* A commenter observed that Priority 3 outlined multiple approaches to determine the quality of evidence but also stated that the field would better benefit from controlled studies of interventions. The commenter asked whether the Department intends for these projects to incorporate randomized control treatment designs.

*Discussion:* We are not requiring a randomized control treatment design but also do not want to discourage applicants from proposing this type of design. We have revised Priority 3 and its associated requirements to clarify that proposed evaluations designed to produce evidence of effectiveness and likely to meet the What Works Clearinghouse Evidence Standards, such as a randomized control treatment design, are also permitted. In short, we would encourage applicants to use the most appropriate and strongest research design to answer their research questions.

*Changes:* We have revised Priority 3 and paragraph (b) of its associated requirements to state that an applicant may propose an evaluation design that, if well implemented, is likely to meet the What Works Clearinghouse Evidence Standards.

### **Final Priorities**

#### *Priority 1: Transition Work-Based Learning Model Demonstrations.*

We give priority to model demonstration projects designed to identify, develop, implement, and evaluate work-based learning models that are supported by evidence and will help ensure that students with disabilities are prepared for postsecondary education and competitive integrated employment. The model demonstration projects must provide work-based learning experiences, supported by evidence, in integrated settings, in coordination with other transition services, including pre-employment transition services, to students with disabilities, through State VR agencies, in collaboration with LEAs or, where appropriate, SEAs and other local partners.

#### *Priority 2: Evidence of Promise Supporting the Proposed Model.*

We give priority to applicants who propose projects supported by evidence of promise for at least one key component and at least one relevant outcome in the logic model for their proposed project.

#### *Priority 3: Project Evaluation Designed to Meet the What Works Clearinghouse Evidence Standards.*

We give priority to applicants that propose to conduct a rigorous and well-designed evaluation of their completed model demonstration project that, if the research design is well implemented, would meet the What Works Clearinghouse Evidence Standards.

#### *Types of Priorities:*

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

### **Final Requirements**

The Assistant Secretary announces the following project requirements for this competition. We may apply one or more of these requirements in any year in which this competition is in effect. Each of the following sets of requirements corresponds to one of the priorities.

#### *Requirements for Priority 1:*

To be considered for funding under Priority 1, applicants must describe their plans to carry out the following project requirements—

(a) Develop and implement a project design replicable in similar contexts and settings that is supported by strong theory. The model must be implemented at multiple local sites to ensure its replicability;

(b) Develop and implement a project demonstrating practices and strategies that are supported by evidence in the use of work-based learning experiences in integrated settings within the local community to prepare students with disabilities for postsecondary education and competitive integrated employment;

(c) Establish partnerships with the LEA or, as appropriate, the SEA, institutions of higher education, employers, and providers or other agencies that are critical to the development of work-based learning experiences in integrated settings for students with disabilities. At a minimum, the partnership must include representatives from the LEA, workforce training providers (*e.g.*, American Job Centers), and employers who will collaborate to develop and provide opportunities (such as internships, short-term employment, and apprenticeships) for students with disabilities served under the project;

(d) Provide career exploration and counseling to assist students in identifying possible career pathways (as defined in this notice) and the relevant work-based learning experiences;

(e) Develop work-based learning experiences in integrated settings, at least one of which must be a paid experience, that—

(1) Provide exposure to a wide range of work sites to help students make informed choices about career selections;

(2) Are appropriate for the age and stage in life of each participating student, ranging from site visits and tours, job shadowing, service learning, apprenticeships, and internships;

(3) Are structured and linked to classroom or related instruction;

(4) Use a trained mentor to help structure the learning at the worksite;

(5) Include periodic assessment and feedback as part of each experience; and

(6) Fully involve students with disabilities and, as appropriate, their representative in choosing and structuring their experiences;

(f) Provide instruction in employee rights and responsibilities, as well as positive work skills, habits, and behaviors that foster success in the workplace;

(g) Identify and provide support services, as appropriate, including transportation services (*e.g.*, transportation education and travel training), that are needed to ensure the student's success in participating in work-based learning experiences;

(h) Identify and provide or arrange for accommodations or assistive technology needed to ensure the student's success in participating in work-based learning experiences;

(i) Develop and implement a plan to measure the model demonstration project's performance and outcomes. A detailed and complete evaluation plan must include—

(1) A formative evaluation plan, consistent with the project's logic model, that—

(i) Includes evaluation questions, source(s) for data, a timeline for data collection, and analysis plans;

(ii) Shows how the outcome (*e.g.*, postsecondary education and competitive integrated employment) and implementation data will be used separately or in combination to improve the project during the performance period; and

(iii) Outlines how these data will be reviewed by project staff, when they will be reviewed, and how they will be used during the course of the project to adjust the model or its implementation to increase the model's usefulness, replicability in similar contexts and settings, and potential for sustainability; and

(2) A summative evaluation plan, including a timeline, to collect and analyze data on students and their outcomes over time, both for students with disabilities served by the project and for students with disabilities in a comparison group not receiving project services.

(j) Collect data necessary to evaluate the outcomes of the project, including the progress of the project in achieving its goals and outcomes, which, at a minimum, must include:

(1) The relevant available RSA-911 Case Service Report data for each student in the project;

(2) The number of students in the work-based learning project;

(3) The number of students in the project who complete at least one work-based learning experience;

(4) The number of work-based learning experiences that each student completes during the project;

(5) The types of work-based learning experiences in which students participated;

(6) The number of students who attain a recognized post-secondary credential and the type of credentials attained;

(7) The number of students who obtain competitive integrated employment; and

(8) An unduplicated count of students who obtain a recognized postsecondary credential and competitive integrated employment.

(k) Make outcome data available to the Department for publication through the National Clearinghouse of Rehabilitation Training Materials.

To be considered for funding under Priority 1, an applicant also must provide the following with its application:

(a) A detailed review of the literature that describes the evidence base for the

proposed demonstration project, its components, and strategies for work-based learning experiences for students with disabilities;

(b) A logic model;

(c) A description of the applicant's plan for implementing the project, including a description of—

(1) A cohesive, articulated model of partnership and coordination among the participating agencies and organizations;

(2) The coordinated set of practices and strategies that are supported by evidence in the use and development of work-based learning models that are aligned with employment, training, and education programs and reflect the needs of employers and of students with disabilities; and

(3) How the proposed project will—

(i) Involve employers in the project design and in partnering with project staff to develop integrated job shadowing, internships, apprenticeships, and other paid and unpaid work-based learning experiences that are designed to increase the preparation of students with disabilities for postsecondary education and competitive integrated employment;

(ii) Conduct outreach activities to identify students with disabilities whom the work-based learning experiences would enable them to achieve competitive integrated employment; and

(iii) Identify innovative strategies, including development, implementation, and evaluation of approved models, methods, and measures that will increase the preparation of students with disabilities for postsecondary education and competitive integrated employment;

(d) A description of the methods and criteria that will be used to select the site(s) at which the project activities will be implemented;

(e) Documentation (*e.g.*, letter of support or draft agreement) that the State VR agency has specific agreements with its partners in the development and implementation of the project;

(f) A plan for evaluating the project's performance, including an evaluation of the practices and strategies implemented by the project, in achieving project goals and objectives.

Specifically, the evaluation plan must include a description of—

(1) A formative evaluation plan, consistent with the project's logic model that includes the following:

(i) The key questions to be addressed by the project evaluation and the appropriateness of the methods for how each question will be addressed;

(ii) How the methods of evaluation will provide valid and reliable

performance data on relevant outcomes, particularly postsecondary and competitive integrated employment outcomes, including the source(s) for the data and the timeline for data collection;

(iii) A clear and credible analysis plan, including a proposed sample size and minimum detectable effect size that aligns with the expected project impact, and an analytic approach for addressing the research questions; and

(iv) How the key components of the project, as well as a measurable threshold for acceptable implementation and outcome data, will be reviewed and used to improve the project;

(2) A summative evaluation plan, including—

(i) How the outcomes and implementation data collected by the project will be used, separately or in combination, to demonstrate that the goals of the model were met;

(ii) How the outcomes for students with disabilities served by the project will be compared with the outcomes of students with disabilities not receiving project services.

(g) A plan for systematic dissemination of project findings, templates, resources, and knowledge gained that will assist State and local VR and educational agencies in adapting or replicating the model work-based learning demonstration developed and implemented by the project, which could include elements such as development of a Web site, resources (e.g., toolkits), community of practice, and participation in national and State conferences;

(h) An assurance that the employment goal for all students served under Priority 1 will be competitive integrated employment, including customized or supported employment; and

(i) An assurance that the project will collaborate with other work-based learning initiatives.

### Requirements for Priority 2

To meet Priority 2, applicants must meet the following requirements:

(a) Applicants must identify and include a detailed discussion of up to two cited studies that meet the evidence of promise standard for at least one key component and at least one relevant outcome in the logic model for the proposed project. Both the critical component(s) and relevant outcome(s) must be specified for each study cited.

(b) The full names and links for the citations submitted for this priority must be provided on the Abstract and Information page of the application, or the full text of each study cited must be provided.

(c) Applicants must specify on the Abstract and Information page the findings in the studies that are cited as evidence of promise for the key component(s) and relevant outcome(s) and ensure that the citations and links are from publicly or readily available sources. Studies of fewer than 10 pages may be attached in full under Other Attachments in *Grants.gov*.

### Requirements for Priority 3

To meet Priority 3, applicants must describe in their applications how they would meet the following competition requirements:

(a) Conduct an independent evaluation (as defined in this notice) of its project. This evaluation must estimate the impact of the project on a relevant outcome.

(b) Use an evaluation design that, if well implemented, is likely to meet the What Works Clearinghouse Evidence Standards.

(c) Make broadly available the results of any evaluations it conducts of its funded activities, digitally and free of charge, through formal (e.g., peer-reviewed journals) or informal (e.g., newsletters) mechanisms. The grantee must also ensure that the data from its evaluation are made available to third-party researchers consistent with applicable privacy requirements.

(d) Cooperate on an ongoing basis with any technical assistance provided by the Department or its contractor and comply with the requirements of any evaluation of the program conducted by the Department.

### Final Definitions

We announce one new definition for use in connection with the priorities. The remaining definitions listed in the NPP and used in the final priorities and requirements in this notice are established defined terms in the Workforce Innovation and Opportunity Act (WIOA), the Rehabilitation Act, or 34 CFR part 77 and are provided in the notice inviting applications published elsewhere in this issue of the **Federal Register**. Specifically, the definitions for the terms “evidence of promise,” “logic model,” “randomized controlled trial,” “relevant outcome,” “quasi-experimental design study,” and “strong theory” are from 34 CFR part 77.

#### Definition:

The Assistant Secretary announces the following definition for this competition. We may apply this definition in any year in which this program is in effect.

*Independent evaluation* means an evaluation that is designed and carried out independent of, and external to, the

grantee but in coordination with any employees of the grantee who develop a process, product, strategy, or practice that is currently being implemented as part of the grant’s activities.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

*Note:* This notice does *not* solicit applications. In any year in which we choose to use these priorities, requirements and this definition, we invite applications through a notice in the **Federal Register**.

### Executive Orders 12866 and 13563

#### Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with

obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these final priorities, requirements, and definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

*Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2016.

*Accessible Format:* Individuals with disabilities can obtain this document in

an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 26, 2016.

**Sue Swenson,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2016–18031 Filed 7–29–16; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 51

[EPA–HQ–OAR–2015–0041; FRL–9949–77–OAR]

**RIN 2060–AR94**

### Air Quality: Revision to the Regulatory Definition of Volatile Organic Compounds—Exclusion of 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) Ethane (HFE-347pcf2)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to revise the regulatory definition of volatile organic compounds (VOC) under the Clean Air Act (CAA). This direct final action adds 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also known as HFE-347pcf2; CAS number 406–78–0) to the list of compounds excluded from the regulatory definition of VOC on the basis that this compound makes a negligible contribution to tropospheric ozone (O<sub>3</sub>) formation.

**DATES:** This rule is effective on September 30, 2016 without further notice, unless the EPA receives adverse comment by August 31, 2016. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0041, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Souad Benromdhane, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Mail Code C539–07, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: (919) 541–4359; fax number: (919) 541–5315; email address: [benromdhane.souad@epa.gov](mailto:benromdhane.souad@epa.gov).

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## I. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This action revises the EPA's regulatory definition of VOC for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for O<sub>3</sub> under title I of the CAA by adding HFE-347pcf2 to the list of compounds excluded from the regulatory definition of VOC on the basis that this compound makes a negligible contribution to tropospheric O<sub>3</sub> formation. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to make this revision to the regulatory definition of VOC if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

## II. Does this action apply to me?

Entities potentially affected by this direct final rule include, but are not necessarily limited to: State and local air pollution control agencies that adopt and implement regulations to control air

emissions of VOC; and industries manufacturing and/or using HFE-347pcf2 as a precision cleaning agent to remove contaminants including oil, flux, and fingerprints from items like medical devices, artificial implants, crucial military and aerospace items, electric components, printed circuit boards, optics, jewelry, ball bearings, aircraft guidance systems, film, relays, and a variety of metal components, among others.

## III. Background

### A. The EPA's VOC Exemption Policy

Tropospheric O<sub>3</sub>, commonly known as smog, is formed when VOC and nitrogen oxides (NO<sub>x</sub>) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of O<sub>3</sub>, the EPA and state governments limit the amount of VOC that can be released into the atmosphere. Volatile organic compounds form O<sub>3</sub> through atmospheric photochemical reactions, and different VOC have different levels of reactivity. That is, different VOC do not react to form O<sub>3</sub> at the same speed or do not form O<sub>3</sub> to the same extent. Some VOC react slowly or form less O<sub>3</sub>; therefore, changes in their emissions have limited effects on local or regional O<sub>3</sub> pollution episodes. It is the EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC in order to focus VOC control efforts on compounds that significantly increase O<sub>3</sub> concentrations. The EPA also believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOC. The EPA lists compounds that it has determined to be negligibly reactive in its regulations as being excluded from the regulatory definition of VOC (40 CFR 51.100(s)).

The CAA requires the regulation of VOC for various purposes. Section 302(s) of the CAA specifies that the EPA has the authority to define the meaning of "VOC" and, hence, what compounds shall be treated as VOC for regulatory purposes. The policy of excluding negligibly reactive compounds from the regulatory definition of VOC was first laid out in the "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977) (from here forward referred to as the 1977 Recommended Policy) and was supplemented subsequently with the "Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans" (70 FR 54046, September 13, 2005) (from here

forward referred to as the 2005 Interim Guidance). The EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and, therefore, suitable for exemption from the regulatory definition of VOC. Compounds that are more reactive than ethane continue to be considered VOC for regulatory purposes and, therefore, are subject to control requirements. The selection of ethane as the threshold compound was based on a series of smog chamber experiments that underlay the 1977 policy.

The EPA has used three different metrics to compare the reactivity of a specific compound to that of ethane: (i) The rate constant for reaction with the hydroxyl radical (OH) (known as  $k_{OH}$ ); (ii) the maximum incremental reactivity (MIR) on a reactivity per unit mass basis; and (iii) the MIR expressed on a reactivity per mole basis. Differences between these three metrics are discussed below.

The  $k_{OH}$  is the rate constant of the reaction of the compound with the OH radical in the air. This reaction is often, but not always the first and rate-limiting step in a series of chemical reactions by which a compound breaks down in the air and contributes to O<sub>3</sub> formation. If this step is slow, the compound will likely not form O<sub>3</sub> at a very fast rate. The  $k_{OH}$  values have long been used by the EPA as metrics of photochemical reactivity and O<sub>3</sub>-forming activity, and they have been the basis for most of the EPA's early exemptions of negligibly reactive compounds from the regulatory definition of VOC. The  $k_{OH}$  metric is inherently a molar-based comparison, *i.e.*, it measures the rate at which molecules react.

The MIR, both by mole and by mass, is a more updated metric of photochemical reactivity derived from a computer-based photochemical model, and has been used as a consideration of reactivity since 1995. This metric considers the complete O<sub>3</sub>-forming activity of a compound over multiple hours and through multiple reaction pathways, not merely the first reaction step with OH. Further explanation of the MIR metric can be found in Carter (1994), "Development of ozone reactivity scales for volatile organic compounds."

The EPA has considered the choice between a molar or mass basis for the comparison to ethane in past rulemakings and guidance. In the 2005 Interim Guidance, the EPA stated:



[A] comparison to ethane on a mass basis strikes the right balance between a threshold that is low enough to capture compounds that significantly affect ozone concentrations and a threshold that is high enough to exempt some compounds that may usefully substitute for more highly reactive compounds.

When reviewing compounds that have been suggested for VOC-exempt status, EPA will continue to compare them to ethane using  $k_{OH}$  expressed on a molar basis and MIR values expressed on a mass basis.

The 2005 Interim Guidance also noted that concerns have sometimes been raised about the potential impact of a VOC exemption on environmental endpoints other than  $O_3$  concentrations, including fine particle formation, air toxics exposures, stratospheric  $O_3$  depletion, and climate change. The EPA has recognized, however, that there are existing regulatory and non-regulatory programs that are specifically designed to address these issues, and the EPA continues to believe in general that the impacts of VOC exemptions on environmental endpoints other than  $O_3$  formation will be adequately addressed by these programs. The VOC exemption policy is intended to facilitate attainment of the  $O_3$  NAAQS. In general, VOC exemption decisions will continue to be based solely on consideration of a compound's contribution to  $O_3$  formation. However, if the EPA determines that a particular VOC exemption is likely to result in a significant increase in the use of a compound and that the increased use would pose a significant risk to human health or the environment that would not be addressed adequately by existing programs or policies, then the EPA may exercise its judgment accordingly in deciding whether to grant an exemption.

#### B. Petition To List HFE-347pcf2 as an Exempt Compound

Asahi Glass Company, AGC Chemicals America, Inc. submitted a petition to the EPA on February 5, 2007, requesting that 1,1,2,2-Tetrafluoro-1-

(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2; CAS number 406–78–0) be exempted from the regulatory definition of VOC. The petition was based on the argument that HFE-347pcf2 has low reactivity relative to ethane. The petitioner indicated that HFE-347pcf2 may be used in a variety of applications as a precision cleaning agent to remove contaminants including oil, flux, and fingerprints from items like medical devices, artificial implants, crucial military and aerospace items, electric components, printed circuit boards, optics, jewelry, ball bearings, aircraft guidance systems, film, relays, and a variety of metal components, among others.

To support its petition, AGC Chemicals America, Inc. referenced several documents, including two peer-reviewed journal articles on HFE-347pcf2's reaction rates (Tokuhashi *et al.*, 2000; Pitts *et al.*, 1983). In 2014, AGC provided a supplemental technical report on the maximum incremental reactivity of HFE-347pcf2 (Carter, 2014). According to this report, the maximum incremental reactivity of HFE-347pcf2 ranges between 0.0007 g  $O_3$ /g HFE-347pcf2 (best estimate) and 0.0013 g  $O_3$ /g HFE-347pcf2 (high reactivity estimate) on the mass-based MIR scale. This reactivity rate is much lower than that of ethane (0.28 g  $O_3$ /g ethane), the compound that the EPA has used for comparison to define “negligible”  $O_3$  reactivity for the purpose of exempting compounds from the regulatory definition of VOC. The rate constant for the gas-phase reaction of OH radicals with HFE-347pcf2 ( $k_{OH}$ ) has been measured to be  $9.16 \times 10^{-15}$  cm<sup>3</sup>/molecule-sec at ~298 K (Pitts *et al.*, 1983; Tokuhashi *et al.*, 2000). Based on the measured reactivity rate of HFE-347pcf2 (Pitts *et al.*, 1983), HFE-347pcf2 has a smaller  $k_{OH}$  than ethane ( $k_{OH}$  of ethane =  $2.4 \times 10^{-13}$  cm<sup>3</sup>/molecule-sec at ~298 K) and, therefore, is less reactive than ethane.

To address the potential for stratospheric  $O_3$  impacts, the petitioner contended that, given the atmospheric lifetime of HFE-347pcf2 and that it does not contain chlorine or bromine, it is not expected to contribute to the depletion of the stratospheric  $O_3$  layer.

#### IV. The EPA's Assessment of the Petition

The EPA is taking direct final action to respond to the petition by exempting HFE-347pcf2 from the regulatory definition of VOC. This action is based on consideration of the compound's low contribution to tropospheric  $O_3$  and the low likelihood of risk to human health or the environment. In this case, the EPA considered issues of contribution to stratospheric  $O_3$  depletion, toxicity, and climate change. Additional information on these topics is provided in the following sections.

##### A. Contribution to Tropospheric Ozone Formation

The reaction rate of HFE-347pcf2 with the OH radical ( $k_{OH}$ ) has been measured to be  $9.16 \times 10^{-15}$  cm<sup>3</sup>/molecule-sec (Tokuhashi *et al.*, 2000); other reactions with  $O_3$  and the nitrate radical were negligibly small. The corresponding reaction rate of ethane with OH is  $2.4 \times 10^{-13}$  cm<sup>3</sup>/molecule-sec (Atkinson *et al.*, 2006).

The overall atmospheric reactivity of HFE-347pcf2 was not studied in an experimental smog chamber, but the chemical mechanism derived from other chamber studies (Carter, 2011) was used to model the complete formation of  $O_3$  for an entire single day under realistic atmospheric conditions (Carter, 2014). In 2014, Carter calculated a MIR value of 0.0007 to 0.0013 g  $O_3$ /g VOC for HFE-347pcf2 for “averaged conditions,” versus 0.28 g  $O_3$ /g VOC for ethane.

Table 1 presents the three reactivity metrics for HFE-347pcf2 as they compare to ethane.

TABLE 1—REACTIVITIES OF ETHANE AND HFE-347pcf2

Compound	$k_{OH}$ (cm <sup>3</sup> /molecule-sec)	Maximum incremental reactivity (MIR) (g $O_3$ /mole VOC)	Maximum incremental reactivity (MIR) (g $O_3$ /g VOC)
Ethane .....	$2.4 \times 10^{-13}$	8.4	0.28
HFE-347pcf2 .....	$9.16 \times 10^{-15}$	0.14–0.26	0.0007–0.0013

#### Notes:

- $k_{OH}$  value at 298 K for ethane is from Atkinson *et al.*, 2006 (page 3626).
- $k_{OH}$  value at 298 K for HFE-347pcf2 is from Tokuhashi, 2000.
- Mass-based MIR value (g  $O_3$ /g VOC) of ethane is from Carter, 2011.
- Mass-based MIR value (g  $O_3$ /g VOC) of HFE-347pcf2 is from a supplemental report by Carter, 2014.
- Molar-based MIR (g  $O_3$ /mole VOC) values were calculated from the mass-based MIR (g  $O_3$ /g VOC) values using the number of moles per gram of the relevant organic compound.

The data in Table 1, shows that HFE-347pcf2 has a significantly lower  $k_{OH}$  value than ethane, meaning that it initially reacts less quickly in the atmosphere than ethane. Also, a molecule of HFE-347pcf2 is less reactive than a molecule of ethane in terms of complete  $O_3$ -forming activity as shown by the molar-based MIR (g  $O_3$ /mole VOC) values. Additionally, one gram of HFE-347pcf2 has a lower capacity than one gram of ethane to form  $O_3$ . Thus, following the 2005 Interim Guidance, HFE-347pcf2 is eligible to be exempted from the regulatory definition of VOC on the basis of  $k_{OH}$  and both the mole- and mass-based MIR.

#### *B. Contribution to Stratospheric Ozone Depletion*

HFE-347pcf2 is unlikely to contribute to the depletion of the stratospheric  $O_3$  layer. The  $O_3$  depletion potential (ODP) of HFE-347pcf2 is expected to be negligible based on several lines of evidence: The absence of chlorine or bromine from the compound, the expected initial reactions described in Carter (2008), and the general theory supporting the estimated mechanisms of its reactivity with the hydroxyl OH discussed in Carter (2011).

The Significant New Alternatives Policy (SNAP) program is the EPA's program to evaluate and regulate substitutes for end uses historically using ozone-depleting chemicals. Under Section 612(c) of the CAA, the EPA is required to identify and publish lists of acceptable and unacceptable substitutes for class I or class II ozone-depleting substances. According to the SNAP program finding, the HFE-347pcf2 ODP is zero and therefore HFE-347pcf2 is listed as an acceptable substitute for several of these ozone-depleting chemicals in electronics and precision cleaning and as an aerosol solvent in 2012.<sup>1</sup>

#### *C. Toxicity*

Based on a screening assessment of the health and environmental risks of HFE-347pcf2 (available in the docket for the SNAP rule at EPA-HQ-OAR-2003-0118 under the name, "Risk Screen on Substitutes CFC-113, Methyl Chloroform, and HCFC-141b in Aerosol Solvent, Electronics Cleaning, and Precision Cleaning Substitute: HFE-347pcf2"), the SNAP program anticipated that users will be able to use the compound in precision cleaning without significantly greater health risks

than presented by use of other available substitutes.

Potential health effects of HFE-347pcf2 include coughing, dizziness, dullness, drowsiness, and headache. Higher concentrations can produce heart irregularities, central nervous system depression, narcosis, unconsciousness, respiratory failure, or death. This compound may also irritate the skin or eyes. The acute and short-term studies presented during the SNAP review indicated that HFE-347pcf2 is toxic by inhalation, and mortality was observed at high concentrations of 2000 ppm and above. HFE-347pcf2 is not commonly used outside of industrial settings, and other compounds in the same industrial uses have similar health and environmental risks. The SNAP program, in their listing of HFE-347pcf2 as an acceptable substitute in aerosol solvent, recommended that adequate ventilation and good industrial hygiene practice be utilized due to the potential neurotoxic effects of this substitute at high acute (short-term) concentrations. The manufacturer recommended an acceptable exposure limit (AEL) for the workplace of 50 ppm (8-hr total weight average, TWA). The EPA recommended a maximum allowable human exposure limit of 150 ppm for HFE-347pcf2. The EPA anticipates that users following good practices will be able to use HFE-347pcf2 in electronics and precision cleaning without appreciable health risks.

HFE-347pcf2 is not regulated as a hazardous air pollutant (HAP) under Title I of the CAA. Also, it is not listed as a toxic chemical under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

The Toxic Substances Control Act (TSCA) gives the EPA authority to assess and prevent potential unreasonable risks to human health and the environment before a new chemical substance is introduced into commerce. Section 5 of TSCA requires manufacturers and importers to notify the EPA before manufacturing or importing a new chemical substance by submitting a pre-manufacture notice (PMN) prior to the manufacture (including import) of the chemical. Under the TSCA New Chemicals Program, the EPA then assesses whether an unreasonable risk may, or will, be presented by the expected manufacture, processing, distribution in commerce, use, and disposal of the new substance. The PMN for HFE-347pcf2 stated the substance will be used in industrial settings for cleaning electronic components, precision cleaning, dewatering of electronic components

and other parts following aqueous cleaning, and as a carrier/lubricant coating for hard disk drives and other precision parts. EPA did not determine that the above-listed proposed industrial processing or use of the substance presents an unreasonable risk. The EPA has determined, however, that domestic manufacture, use in non-industrial products, or use other than as described in the PMN may cause serious chronic health effects. To mitigate risks identified during the PMN review of HFE-347pcf2 (PMN P-04-0635), EPA issued a Significant New Use Rule (SNUR)<sup>2</sup> requiring that manufacturers notify the EPA prior to manufacture or processing of the compound for any new use other than those proposed in the PMN. The required notification will provide the EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

#### *D. Contribution to Climate Change*

The Intergovernmental Panel on Climate Change (IPCC) Fifth Assessment Report (IPCC AR5) estimated the lifetime of HFE-347pcf2 to be 6.0 years and the radiative efficiency to be 0.48 W/m<sup>2</sup>/ppb. The report estimated the resulting 100-year global warming potential (GWP) to be 889, meaning that, over a 100-year period, one ton of HFE-347pcf2 traps 889 times as much warming energy as one ton of CO<sub>2</sub> (IPCC, 2013).<sup>3</sup> HFE-347pcf2's GWP of 889 is lower than some of the substitutes in the end uses for which it has been listed as acceptable under the SNAP program, such as HFC-4310mee (GWP = 1650), but higher than the GWP of some other substitutes, such as HFC-365mfc (GWP = 804), HFE-7100 (GWP = 421) and aqueous cleaners with no direct GWP. Under the SNAP program, the EPA continually reviews the availability of acceptable substitutes and expects to eventually eliminate higher-GWP chemicals from the list of acceptable compounds as safer, lower-GWP substitutes become available.

#### *E. Conclusions*

The EPA finds that HFE-347pcf2 is negligibly reactive with respect to its contribution to tropospheric  $O_3$  formation and thus may be exempted from the EPA's definition of VOC in 40 CFR 51.100(s). HFE-347pcf2 has been

<sup>1</sup> 77 FR 47768, August 10, 2012. Also see list of acceptable cleaning solvents under SNAP decision: <http://www.epa.gov/ozone/snap/solvents/solvents.pdf>.

<sup>2</sup> 77 FR 61117 (Oct. 5, 2012): FR document, with preamble background. See 40 CFR 721.10549.

<sup>3</sup> The GWP value for HFE-347pcf2 of 580 considered in the 2012 SNAP decision came from the previous IPCC report, AR4 (IPCC, 2007). AR4 GWP values are still used in a number of regulatory and reporting contexts to maintain consistency and allow for analysis of trends.

listed as acceptable for use in electronic and precision cleaning and as an aerosol solvent under the SNAP program (USEPA, 2004). The EPA determined that HFE-347pcf2 has a similar or lower stratospheric O<sub>3</sub> depletion potential than available substitutes in those end uses and that the toxicity risk from using HFE-347pcf2 is not significantly greater than the risk from using other available alternatives. HFE-347pcf2, among other hydrofluoroethers, was found by both the Montreal Protocol's solvents, coatings, and adhesives technical options committee in 2002 and its technical and economic assessment panel in 2005, to be a suitable replacement for other, more harmful cleaning solvents (UNEP, 2002, 2005). HFE-347pcf2 is expected to be used primarily for the purposes regulated by the SNAP program. It is mostly replacing chemicals with higher GWP and the SNAP program will continue to evaluate its acceptability as an alternative for those specific uses, the EPA has concluded that non-tropospheric ozone-related risks associated with potential increased use of HFE-347pcf2 are adequately managed by this program. The EPA does not expect significant use of HFE-347pcf2 in applications not covered by the SNAP program. However, the SNUR in place under TSCA requires that any significant new use of the chemical be reported to EPA using a Significant New Use Notice (SNUN).

Any significant new use of HFE-347pcf2 would need to be evaluated by the EPA, and the EPA will continually review the availability of acceptable substitute chemicals from the list of acceptable compounds under the SNAP program as lower-GWP substitutes become available, which could lead to restrictions on the use of HFE-347pcf2, should safer, lower-GWP substitutes become available. At this time, SNAP does not anticipate further evaluation of HFE-347pcf2 to potentially remove the compound from the list of acceptable substitutes in the precision cleaning end-use largely because the use of the chemical is limited to a small niche market.

## V. Direct Final Action

The EPA is responding to the petition by revising its regulatory definition of VOC at 40 CFR 51.100(s) to add HFE-347pcf2 to the list of compounds that are exempt from the regulatory definition of VOC because it is less reactive than ethane based on a comparison of K<sub>OH</sub>, and mass-based MIR, and molar-based MIR metrics and is therefore considered negligibly reactive. As a result of this action, if an

entity uses or produces any of this compound and is subject to the EPA regulations limiting the use of VOC in a product, limiting the VOC emissions from a facility, or otherwise controlling the use of VOC for purposes related to attaining the O<sub>3</sub> NAAQS, then this compound will not be counted as a VOC in determining whether these regulatory obligations have been met. This action may also affect whether this compound is considered a VOC for state regulatory purposes to reduce O<sub>3</sub> formation if a state relies on the EPA's regulatory definition of VOC. States are not obligated to exclude from control as a VOC those compounds that the EPA has found to be negligibly reactive. However, no state may take credit for controlling this compound in its O<sub>3</sub> control strategy. Consequently, reduction in emissions for this compound will not be considered or counted in determining whether states have met the rate of progress requirements for VOC in SIPs or in demonstrating attainment of the O<sub>3</sub> NAAQS.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. It does not contain any recordkeeping or reporting requirements.

### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action removes HFE-347pcf2 from the regulatory definition of VOC and thereby relieves manufacturers, distributors, and users of the compound from requirements to control emissions of the compound.

### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

### E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This direct final rule removes HFE-347pcf2 from the regulatory definition of VOC and thereby relieves manufacturers, distributors and users from requirements to control emissions of the compound. Thus, Executive Order 13175 does not apply to this action.

### G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Since HFE-347pcf2 is utilized in specific industrial applications where children are not present and dissipates quickly, there is no exposure or disproportionate risk to children. This action removes HFE-347pcf2 from the regulatory definition of VOC and thereby relieves manufacturers, distributors and users from requirements to control emissions of the compound.

### H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

### I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous

peoples, as specified in Executive Order 12898 (59 FR 7629 February 16, 1994). This action removes HFE-347pcf2 from the regulatory definition of VOC and thereby relieves manufacturers, distributors, and users of the compound from requirements to control emissions of the compound.

#### K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date the final action is published in the **Federal Register**. Filing a petition for review by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such action. Thus, any petitions for review of this action related to the exemption of HFE-347pcf2 from the regulatory definition of VOC must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

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#### List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 20, 2016.

**Gina McCarthy,**  
Administrator.

For reasons stated in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

### Subpart F—Procedural Requirements

■ 1. The authority citation for part 51, subpart F, continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

■ 2. Section 51.100 is amended by revising the introductory text of paragraph (s)(1) to read as follows:

#### § 51.100 Definitions.

\* \* \* \* \*

(s)(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ( $\text{C}_4\text{F}_9\text{OCH}_3$  or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane

((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub> or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub>, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH<sub>3</sub>); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; dimethyl carbonate; *trans*-1,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); *trans* 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; t-butyl acetate; 1,1,2,2-Tetrafluoro -1-(2,2,2-trifluoroethoxy) ethane; and perfluorocarbon compounds which fall into these classes:

\* \* \* \* \*

[FR Doc. 2016-17789 Filed 7-29-16; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2016-0304; FRL-9949-72-Region 3]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compounds Emissions From Fiberglass Boat Manufacturing Materials

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a state implementation plan (SIP) revision submitted by the State of Maryland. This revision pertains to Maryland's adoption of the requirements in EPA's control technique guidelines (CTG) for fiberglass boat manufacturing materials. This action is being taken under the Clean Air Act (CAA).

**DATES:** This rule is effective on September 30, 2016 without further notice, unless EPA receives adverse written comment by August 31, 2016. If EPA receives such comments, it will publish a timely withdrawal of the

direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2016-0304 at <http://www.regulations.gov>, or via email to [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Gavin Huang, (215) 814-2042, or by email at [huang.gavin@epa.gov](mailto:huang.gavin@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including reasonably available control technology (RACT), for sources of emissions. Additionally, Maryland is in the Ozone Transport Region (OTR) established under section 184(a) of the CAA. Pursuant to section 184(b)(1)(B) of the CAA, all areas in the OTR must submit SIP revisions that include implementation of RACT with respect to all sources of VOCs in the states covered by a CTG. *See* CAA section 184(b)(1). EPA defines RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." 44 FR 53761 (September 17, 1979).

CTGs are intended to provide state and local air pollution control

authorities information that should assist them in determining RACT for VOCs from various sources of fiberglass boat manufacturing. EPA has not published a previous CTG for fiberglass boat manufacturing materials, but did publish an assessment of VOC emissions from fiberglass boat manufacturing in 1990. The 1990 assessment defined the nature and scope of VOC emissions from fiberglass boat manufacturing, characterized the industry, estimated per plant and national VOC emissions, and identified and evaluated potential control options. In 2001, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing, 40 CFR part 63, subpart VVVV (2001 NESHAP). The 2001 NESHAP established organic hazardous air pollutant (HAP) emissions limits based on low-HAP resins and gel coats and low-emitting resin application technology. Several of the air pollution control districts in California have specific regulations that control VOC emissions from fiberglass boat manufacturing operations as part of their regulations for limiting VOC emissions from polyester resin operations. Several other states also have regulations that address VOC emissions from fiberglass boat manufacturing as part of polyester resin operations. After reviewing the 1990 VOC assessment, the 2001 NESHAP, and existing California district and other state VOC emission reduction approaches, and after considering information obtained since the issuance of the 2001 NESHAP, EPA developed a CTG entitled *Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials* (Publication No. EPA 453/R-08-004; September 2008).

The CTG for fiberglass boat manufacturing materials provides control recommendations for reducing VOC emissions from the use of gel coats, resins, and materials used to clean application equipment in fiberglass boat manufacturing operations. This CTG applies to facilities that manufacture hulls or decks of boats from fiberglass or build molds to make fiberglass boat hulls or decks. EPA's 2008 CTG recommends that the following operations should be covered: Open molding resin and gel coat operations (these include pigmented gel coat, clear gel coat, production resin, tooling gel coat, and tooling resin); resin and gel coat mixing operations; and resin and gel coat application equipment cleaning operations.

EPA's 2008 CTG recommends the following VOC reduction measures:

VOC emission limits for molding resins and gel coats; work practices for resin and gel coat mixing containers; and

VOC content and vapor pressure limits for cleaning materials. Recommended VOC emission limits for open molding

resin and gel coat operations are shown in Table 1.

TABLE 1—MONOMER VOC CONTENT LIMITATIONS FOR OPEN MOLDING RESIN AND GEL COAT OPERATIONS

Materials	Application method	Individual monomer VOC content or weight average monomer VOC content limit (weight percent)
Production Resin .....	Atomized (spray) .....	28
Production Resin .....	Nonatomized .....	35
Pigmented Gel Coat .....	Any Method .....	33
Clear Gel Coat .....	Any Method .....	48
Tooling Resin .....	Atomized .....	30
Tooling Resin .....	Nonatomized .....	39
Tooling Gel Coat .....	Any Method .....	40

## II. Summary of SIP Revision

On December 23, 2015, the Maryland Department of the Environment (MDE) submitted on behalf of the State of Maryland to EPA SIP revision #15-07 concerning implementation of RACT requirements for the control of VOC emissions from fiberglass boat manufacturing materials. Maryland has adopted EPA's CTG standards for fiberglass boat manufacturing materials, including the emission limits found in Table 1 of this rulemaking action, through a regulation, found at Code of Maryland Regulations (COMAR) 26.11.19 (relating to VOC from specific processes). This SIP revision seeks to add COMAR 26.11.19.26-1 (control of VOC emissions from fiberglass boat manufacturing materials) to the Maryland SIP and also includes an amendment to COMAR 26.11.19.26 (control of VOC emissions from reinforced plastic manufacturing) which was previously approved into the Maryland SIP. In addition to adopting EPA's CTG standards, COMAR 26.11.19.26-1 includes numerous terms and definitions to support the interpretation of the measures, as well as work practices for cleaning, compliance and monitoring requirements, sampling and testing, and record keeping requirements. The amendment to COMAR 26.11.19.26 at COMAR 26.11.19.26A exempts fiberglass boat manufacturing to avoid duplicative or conflicting requirements. Prior to Maryland's new COMAR 26.11.19.26-1, fiberglass boat manufacturing materials were covered under COMAR 26.11.19.26 which did not address fully EPA's CTG requirements. Thus, with COMAR 26.11.19.26-1 now addressing fiberglass boat manufacturing materials, Maryland has revised COMAR 26.11.19.26A to clarify and exempt fiberglass boat manufacturing materials from COMAR

26.11.19.26A as these are now clearly addressed in COMAR 26.11.19.26-1. EPA finds the provisions in COMAR 26.11.19.26-1 identical to the CTG standards for fiberglass boat manufacturing materials and therefore approvable in accordance with sections 172(c)(1) and 184(b)(1)(B) of the CAA.

## III. Final Action

EPA is approving the Maryland SIP revision adding new regulation COMAR 26.11.19.26-1 and amending COMAR 26.11.19.26, which was submitted on December 23, 2015, because it meets the requirement to adopt RACT for sources covered by EPA's CTG standards for fiberglass boat manufacturing materials. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on *September 30, 2016* without further notice unless EPA receives adverse comment by *August 31, 2016*. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## IV. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of COMAR 26.11.19.26-1 and an amendment to COMAR 26.11.19.26 into the Maryland SIP. EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or may be viewed at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the “Proposed Rules” section of this **Federal Register**, rather

than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action to approve the Maryland SIP revision adding new regulation COMAR 26.11.19.26–1 and amending COMAR 26.11.19.26 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: July 15, 2016.

**Shawn M. Garvin,**  
Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

#### **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

- 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart V—Maryland**

- 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for “26.11.19.26” and adding in numerical order the entry for “26.11.19.26–1” to read as follows:

#### **§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

#### **EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP**

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
<b>26.11.19 Volatile Organic Compounds From Specific Processes</b>				
26.11.19.26 .....	Control of Volatile Organic Compound Emissions from Reinforced Plastic Manufacturing.	09/28/15	8/1/16 [ <i>Insert Federal Register citation</i> ].	Amendment to .26A.
26.11.19.26–1 .....	Control of Volatile Organic Compound Emissions from Fiberglass Boat Manufacturing.	09/28/15	8/1/16 [ <i>Insert Federal Register citation</i> ].	New Regulation.
*	*	*	*	*



\* \* \* \* \*

[FR Doc. 2016-17809 Filed 7-29-16; 8:45 am]

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**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 52****[EPA-R09-OAR-2015-0280; FRL-9947-70-  
Region 9]****Revisions to California State  
Implementation Plan; Bay Area Air  
Quality Management District;  
Stationary Source Permits****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of revisions to Regulation 2, Rules 1 and 2 for the Bay Area Air Quality Management District (BAAQMD or District) portion of the California State Implementation Plan (SIP) submitted on April 22, 2013. These revisions consist of significant updates to rules governing the issuance of permits for stationary sources, including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act (CAA). Under the authority of the CAA, this action simultaneously approves a local rule that regulates permit requirements for stationary sources and directs the BAAQMD to correct rule deficiencies.

**DATES:** These rules will be effective on August 31, 2016.

**ADDRESSES:** The EPA has established docket number EPA-R09-OAR-2015-0280 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Shaheerah Kelly, EPA Region 9, (415) 947-4156, [kelly.shaheerah@epa.gov](mailto:kelly.shaheerah@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

**Table of Contents**

- I. Proposed Action
- II. Summary of Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Review

**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The word or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials *ATC* mean or refer to the authority to construct permit.

(iii) The word or initials *BAAQMD* or *District* mean or refer to the Bay Area Air Quality Management District.

(iv) The initials *CFR* mean or refer to Code of Federal Regulations.

(v) The initials or words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(vi) The initials *ERCs* mean or refer to Emission Reduction Credits.

(vii) The initials *FLM* mean or refer to Federal Land Manager.

(viii) The initials *FR* mean or refer to **Federal Register**.

(ix) The initials *NSR* mean or refer to New Source Review.

(x) The initials *PM<sub>2.5</sub>* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).

(xi) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xii) The initials *PTE* mean or refer to potential to emit.

(xiii) The initials *SIP* mean or refer to State Implementation Plan.

(xiv) The initials *SO<sub>2</sub>* mean or refer to sulfur dioxide.

(xv) The initials *TSD* mean or refer to the technical support document for the proposed action.

**I. Proposed Action**

On August 28, 2015, the EPA proposed a limited approval and limited disapproval of the rules listed in Table 1 that were submitted for incorporation into the California SIP. 80 FR 52236 (Aug. 28, 2015). Our detailed analysis of these rules is provided in the TSD and **Federal Register** notice for the proposed rulemaking for this SIP revision approval action.

TABLE 1—SUBMITTED NSR RULES

Regulation & rule No.	Rule title	Adopted/ amended	Submitted
Regulation 2, Rule 1 (2-1) .....	Permits, General Requirements .....	12/19/12	4/22/13
Regulation 2, Rule 2 (2-2) .....	Permits, New Source Review .....	12/19/12	4/22/13

We proposed a limited approval because we determined that these rules strengthen the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with CAA section 110, including Parts C and D, and the regulations implementing those laws. The disapproved provisions include the following:

1. The definitions of “agricultural source” in Section 2-1-239 and “large confined animal facility” used in Section 2-1-424 rely on other

definitions and provisions in District rules that are not SIP approved. (See our evaluation of Sections 2-1-239 and 2-1-424 in section 6.1.2 of the TSD.)

2. Section 2-1-234, subparagraph 2.2, is deficient because it does not satisfy the PSD provisions at 40 CFR 51.166(a)(7) and 51.166(r)(6) & (7), which require PSD programs to contain specific applicability procedures and recordkeeping provisions. (See our evaluation of Section 2-1-234 in sections 6.1.2 and 7.2.2 of the TSD.)

3. The same deficiency discussed above for the PSD provisions applies to

the nonattainment NSR provisions. Section 2-1-234, subparagraph 2.1, does not satisfy the requirements of 51.165(a)(2) and 51.165(a)(6) & (7), which require nonattainment NSR programs to contain specific applicability procedures and recordkeeping provisions. (See our evaluation of Section 2-1-234 in sections 6.1.2 and 7.3.12 of the TSD.)

4. The definition of the term “PSD pollutant” as defined in Section 2-2-223, which is used in place of the federal definition for the term “regulated NSR pollutant,” is deficient



because it explicitly excludes nonattainment pollutants. (See our evaluation of Sections 2–2–223 and 2–2–224 in sections 6.2.2 and 7.2.3 of the TSD.)

5. Section 2–2–305 does not require written approval of the Administrator prior to using any modified or substituted air quality model as provided in subsection 3.2.2 of 40 CFR 51, appendix W. (See our evaluation of Section 2–2–305 in sections 6.2.3 and 7.2.15 of the TSD.)

6. Section 2–2–611 does not include the requirement regarding “any other stationary source category which as of August 7, 1980, is being regulated under section 111 or 112 of the Act” in the list of source categories that must include fugitive emissions to determine whether a source is a major facility. (See our evaluation of Section 2–2–611 in sections 6.2.6 and 7.3.10 of the TSD.)

7. Section 2–2–401.4 only requires a visibility analysis for sources that are located within 100 km of a Class I area, rather than for any source that “may have an impact on visibility” in any mandatory Class I Federal Area, as required by 40 CFR 51.307(b)(2). (See our evaluation of Section 2–2–401.4 in sections 6.2.4 and 7.3.9 of the TSD.)

8. Section 2–2–411 pertaining to Offset Refunds does not contain any timeframe for obtaining an offset refund. (See our evaluation of Section 2–2–411 in section 6.2.4 of the TSD.)

9. The Offset Program Equivalence demonstration required by Section 2–2–412 does not provide a remedy if the District fails to make the required demonstration. (See our evaluation of Section 2–2–412 in section 6.2.4 of the TSD.)

10. Subsection 2–2–605.2 allows existing “fully-offset” sources to generate ERCs based on the difference between the post-modification PTE and the pre-modification PTE. Emission reductions intended to be used as offsets for new major sources or major modifications are only creditable if they are reductions of actual emissions, not reductions in the PTE of a source. (See our evaluation of Section 2–2–605 in sections 6.2.6, 7.3.3, 7.3.13, and 7.3.22 of the TSD.)

11. Subsection 2–2–606.2, as it applies to major modifications, does not require “fully-offset” sources to calculate the emission increases from a proposed major modification based on the difference between the post-modification PTE and the pre-modification actual emissions as required by 40 CFR 51.165(a)(3)(ii)(J). (See our evaluation of Section 2–2–606 in sections 6.2.6 and 7.3.22 of the TSD.)

In addition, we had proposed a limited disapproval of Section 2–2–308. (See our evaluation of Section 2–2–308 in sections 6.2.3 and 7.4.1 of the TSD.) We also proposed to find the rules were deficient because they did not require a demonstration that a new source meet all applicable SIP requirements as required by 40 CFR 51.160(b)(1). (See section 7.4.1 in the TSD.) For the reasons discussed in sections 2.2 and 2.3 of our Response to Comments document, we are not finalizing our proposed disapproval of Section 2–2–308 or the proposed deficiency based on the requirements of 40 CFR 51.160(b)(1).

## II. Summary of Public Comments and EPA Responses

Our August 28, 2015 proposed rulemaking provided a 30-day public comment period. The EPA granted a request from BAAQMD to extend the public comment period until November 12, 2015, which is the date the public comment period ended. We received comments from BAAQMD and the California Council for Environmental and Economic Balance (CCEEB).<sup>1</sup> We also received a comment letter from the Sacramento Metropolitan Air Quality Management District (SMAQMD) after the public comment period ended. We received an anonymous, non-substantive comment letter and a comment letter submitted on behalf of the California Air Pollution Control Officers Association (CAPCOA) that was withdrawn during the comment period. Our Response to Comments document in the docket for this action contains a summary of the comments and the EPA’s responses. The full text of the public comments, as well as all other documents relevant to this action, are available in the docket (visit <http://www.regulations.gov> and search for Docket ID: EPA–R09–OAR–2015–0280). Below, we briefly summarize the significant comments and our responses to the major issues raised by commenters.

*Comment 1:* BAAQMD commented that the CAA is designed to achieve “cooperative federalism”, and that the EPA should defer to the District’s policy choices on how to implement its NSR program.

*Response 1:* The EPA understands its role under the cooperative federalism approach established under the CAA and we have applied the appropriate

<sup>1</sup> Each of the comments contained in CCEEB’s comment letter mirrored issues raised in the BAAQMD comment letter, therefore the comment summary provided in this notice does not attribute specific comments to CCEEB. Please see the Response to Comments documents for more information.

standard in reviewing the BAAQMD’s NSR rules.

*Comment 2:* BAAQMD disagrees with the EPA’s limited disapproval of Section 2–2–308 as it relates to satisfying the requirements in 40 CFR 51.160(b).

*Response 2:* We are not finalizing our limited disapproval of Section 2–2–308 as it relates to 40 CFR 51.160(b)(2) for the reasons discussed in our Response to Comments document. Accordingly, the EPA is finalizing approval of Section 2–2–308.

*Comment 3:* BAAQMD disagrees with the EPA’s limited disapproval of the District NSR rules because it did not contain a prohibition on the issuance of an ATC if the project does not meet all applicable requirements of the control strategy as required in 40 CFR 51.160(b)(1). BAAQMD commented that Sections 2–1–304 and 2–1–321 satisfy this requirement.

*Response 3:* The EPA is not finalizing our proposed limited disapproval of this issue because Section 2–1–304 satisfies the control strategy requirement in 40 CFR 51.160(b)(1). The EPA is finalizing approval of Section 2–1–304 as satisfying requirement in 40 CFR 51.160(b)(1).

*Comment 4:* BAAQMD disagrees with the EPA’s proposed limited disapproval of Section 2–2–602.2 for determining the amount of offsets required for major modifications that will be constructed at major sources that have previously provided offsets equal to the source’s PTE when the modification will not increase the PTE of the source.

*Response 4:* The EPA is finalizing our limited disapproval regarding this issue. 40 CFR 51.165(a)(3)(ii)(J) directs SIPs to include rules to ensure that the total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173 of the Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification. This provision requires providing offsets for each major modification at a major source in an amount equal to the difference between pre-modification actual emissions and post-modification PTE.

*Comment 5:* BAAQMD disagrees with the EPA’s proposed limited disapproval of the PTE-to-PTE calculation method for determining the amount of ERCs generated from sources that have provided offsets up to their full PTE and that are being shut down.

*Response 5:* The EPA is finalizing its limited disapproval on this issue because offsets are required to be generated from reductions in actual

emissions consistent with CAA section 173(a) and (c) and 40 CFR 51.165(a)(3).

*Comment 6:* BAAQMD comments that the EPA cannot require nonattainment offsets for SO<sub>2</sub> because the San Francisco Bay Area is not designated as nonattainment for SO<sub>2</sub>.

*Response 6:* The EPA is finalizing its limited disapproval on this issue because 40 CFR 51.165(a)(1)(xxxvii) specifies that sulfur dioxide is a precursor in all PM<sub>2.5</sub> nonattainment areas and the BAAQMD is designated nonattainment for the 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards.

*Comment 7:* BAAQMD comments that the EPA's visibility regulations at 40 CFR 51.307(b) do not specify what projects "may have an impact" on visibility at Federal Class I areas, therefore it is acceptable to use a 100-km radius to meet the requirement.

*Response 7:* The EPA is finalizing its limited disapproval on this issue because the EPA's visibility regulations require a new major source or major modification that "may have an impact on visibility" at a Federal mandatory Class I area to conduct a visibility analysis on a case-by-case basis in consultation with the applicable FLM.

*Comment 8:* BAAQMD requests that the EPA confirm that the limited approval and limited disapproval action will make the BAAQMD's NSR rules as a whole part of the California SIP and federally enforceable under the CAA.

*Response 8:* Regulation 2, Rules 1 and 2 will become the federally enforceable NSR program in the SIP for BAAQMD subject to an obligation to correct rule deficiencies listed in Section I of this **Federal Register** document.

### III. EPA Action

For the reasons provided in our proposed rule and above in response to comments, pursuant to section 110(k) of the CAA, the EPA is finalizing a limited approval and limited disapproval of the submitted BAAQMD rules, listed in Table 1 above, into the California SIP. Regulation 2, Rules 1 and 2 will become the federally enforceable NSR program in the SIP for BAAQMD subject to an obligation to correct the rule deficiencies listed in Section I of this **Federal Register** document. We are finalizing a limited approval because incorporating the BAAQMD permitting rules will strengthen and update the BAAQMD portion of the California SIP. We are finalizing our limited disapproval because some of the BAAQMD permitting rules do not comply with federal NSR requirements.

We are finalizing our action as proposed, except for the limited

disapprovals regarding Sections 2–2–308 and the requirements of 40 CFR 51.160(a) and (b). Accordingly, the EPA will finalize approval of these provisions.

Our limited disapproval action will trigger an obligation for the EPA to promulgate a Federal Implementation Plan under CAA section 110(c) unless California corrects the deficiencies that are the bases for the limited disapproval, and the EPA approves the related rule revisions, within 24 months of the effective date of this final action. In addition, sanctions will be imposed unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act and 40 CFR 52.31.

The District has been implementing the federal PSD permitting program based on a delegation agreement with the EPA pursuant to 40 CFR 52.21(u).<sup>2</sup> Despite limited deficiencies, this final action approving the District's PSD permitting program into the SIP means that the District will be the PSD permitting authority on the effective date of this final action. Concurrent with the EPA's approval of the District's rules, all PSD permits for sources located in the BAAQMD issued directly by the EPA or under the PSD delegation agreement are being transferred to the District. A list of these EPA-issued permits is included in the docket for this rulemaking action.

### IV. Incorporation by Reference

The EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the BAAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through <http://www.regulations.gov> and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

### V. Statutory and Executive Order Review

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

<sup>2</sup> On June 21, 2004, the EPA issued a PSD delegation agreement, which was updated on January 20, 2006, February 4, 2008, and March 9, 2011.

#### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

#### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

#### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

#### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### *F. Executive Order 13175: Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those

regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon monoxide, Environmental protection, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 3, 2016.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart F—California**

■ 2. Section 52.220 is amended by adding paragraphs (c)(182)(i)(B)(7) and (c)(199)(i)(A)(9) and (c)(202)(i)(A)(2) and (c)(429)(i)(E)(1) and (2) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(182) \* \* \*

(i) \* \* \*

(B) \* \* \*

(7) Previously approved on January 26, 1999 in paragraph (c)(182)(i)(B)(6) of this section and now deleted with replacement in (c)(429)(i)(E)(1), Regulation 2, Rule 1 adopted on November 1, 1989.

\* \* \* \* \*

(199) \* \* \*

(i) \* \* \*

(A) \* \* \*

(9) Previously approved on January 26, 1999 in paragraph (c)(199)(i)(A)(8) of this section and now deleted with replacement in (c)(429)(i)(E)(2), Regulation 2, Rule 2 adopted on June 15, 1994.

\* \* \* \* \*

(202) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) Previously approved on April 3, 1995 in paragraph (c)(202)(i)(A)(1) of this section and now deleted with replacement in (c)(429)(i)(E)(1), Rule 2–1–249, adopted on June 15, 1994.

\* \* \* \* \*

(429) \* \* \*

(i) \* \* \*

(E) Bay Area Air Quality Management District.

(1) Regulation 2, “Permits,” Rule 1, “General Requirements,” adopted on December 19, 2012.

(2) Regulation 2, “Permits,” Rule 2, “New Source Review,” adopted on December 19, 2012.

\* \* \* \* \*

■ 3. Section 52.270 is amended by adding paragraph (b)(16) to read as follows:

**§ 52.270 Significant deterioration of air quality.**

\* \* \* \* \*

(b) \* \* \*

(16) The PSD program for the Bay Area Air Quality Management District (BAAQMD), as incorporated by reference in § 52.220(c)(429)(i)(E)(2), is approved under part C, subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to § 52.21 to sources located in the BAAQMD, this approval includes the authority for the BAAQMD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.

\* \* \* \* \*

[FR Doc. 2016–17904 Filed 7–29–16; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R01–OAR–2014–0617; A–1–FRL–9950–03–Region 1]

**Air Plan Approval; VT; Prevention of Significant Deterioration, Nonattainment and Minor New Source Review**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving three State Implementation Plan (SIP) revisions submitted by the State of Vermont. These revisions primarily amend several aspects of Vermont’s new source review permitting regulations. The permitting revisions are part of Vermont’s major and minor stationary source preconstruction permitting programs, and are intended to align Vermont’s regulations with the federal new source review regulations. The revisions also contain amendments to other Clean Air Act (CAA) requirements, including updating the State’s ambient air quality standards and certain emissions limits for sources of nitrogen oxides and sulfur

dioxide. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective September 30, 2016, unless EPA receives adverse comments by August 31, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OAR–2014–0617 at <http://www.regulations.gov>, or via email to [McDonnell.Ida@epa.gov](mailto:McDonnell.Ida@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://Regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Ida E. McDonnell, Manager, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, (OEP05–2), Boston, MA 02109–3912, phone number (617) 918–1653, fax number (617) 918–0653, email [McDonnell.Ida@epa.gov](mailto:McDonnell.Ida@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
  - A. Clean Air Act Permitting
  - B. State Ambient Air Quality Standards
- II. Summary of State Submittals
  - A. 1993 SIP Revision
  - B. 2011 SIP Revision

- C. 2014 SIP Revision
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

## I. Background and Purpose

### A. Clean Air Act Permitting

In the Clean Air Act Amendments of 1990, nonattainment new source review (NSR) requirements were expanded to include ozone attainment areas within the Ozone Transport Region (OTR). The federal regulations at 40 CFR 51.165 contain the minimum elements that a State’s preconstruction permitting program for major stationary sources in nonattainment areas (and in the OTR) must contain in order for EPA to approve the State’s program into the SIP.

On November 29, 2005 (70 FR 71612), EPA promulgated the “Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline” (Phase 2 Rule). Among other requirements, the Phase 2 Rule obligated states to revise their Prevention of Significant Deterioration (PSD) programs to explicitly identify nitrogen oxides (NO<sub>x</sub>) as a precursor to ozone. This requirement was codified in 40 CFR 51.166, and requires that states submit SIP revisions incorporating the requirements of the rule, including specific provisions treating NO<sub>x</sub> as a precursor to ozone, by June 15, 2007. See 70 FR 71612 at 71683, November 29, 2005.

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)” (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM<sub>2.5</sub> and other pollutants that contribute to secondary PM<sub>2.5</sub> formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, otherwise known as precursor pollutants. In the 2008 rule, EPA identified precursors to PM<sub>2.5</sub> for the PSD program to be sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub> (unless the state demonstrates to the Administrator’s satisfaction, or EPA demonstrates, that NO<sub>x</sub> emissions in an area are not a significant contributor to that area’s ambient PM<sub>2.5</sub> concentrations). The 2008 NSR Rule also specifies that

volatile organic compounds (VOCs) are not considered to be precursors to PM<sub>2.5</sub> in the PSD program, unless the state demonstrates to the Administrator’s satisfaction, or EPA demonstrates, that emissions of VOCs in an area are significant contributors to that area’s ambient PM<sub>2.5</sub> concentrations. The explicit references to SO<sub>2</sub>, NO<sub>x</sub> and VOCs as they pertain to secondary PM<sub>2.5</sub> formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 52.21(b)(50)(i)(b). As part of identifying pollutants that are precursors to PM<sub>2.5</sub>, the 2008 NSR Rule also required states to revise the definition of “significant” as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 52.21(b)(23)(i) define “significant” for PM<sub>2.5</sub> to mean the following emissions rates: 10 tons per year (tpy) of direct PM<sub>2.5</sub>; 40 tpy of SO<sub>2</sub>; and 40 tpy of NO<sub>x</sub> (unless the state demonstrates to the Administrator’s satisfaction, or EPA demonstrates, that NO<sub>x</sub> emissions in an area are not a significant contributor to that area’s ambient PM<sub>2.5</sub> concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011. See 73 FR 28321 at 28341, May 16, 2008.

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM<sub>2.5</sub> and PM<sub>10</sub> emission limits in NSR permits. Instead, EPA determined that states had to account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables for applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits beginning on or after January 1, 2011. See 73 FR 28321 at 28334. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 52.21(b)(50)(i)(a). Revisions to states’ PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011. See 73 FR 28321 at 28341.

On October 20, 2010, EPA issued the final rule on the “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (2010 PSD Rule). See 75 FR 64864. This rule established several components for making PSD permitting determinations for PM<sub>2.5</sub>, including a system of “increments,” which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c). The 2010 PSD Rule also

established a new “major source baseline date” for PM<sub>2.5</sub> as October 20, 2010, and a new trigger date for PM<sub>2.5</sub> as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 PSD Rule revised the definition of “baseline area” to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM<sub>2.5</sub>. This change is codified in 40 CFR 51.166(b)(15)(i) and 52.21(b)(15)(i).

### *B. State Ambient Air Quality Standards*

Section 109 of the CAA directs EPA to establish NAAQS requisite to protect public health with an adequate margin of safety (primary standard) and for the protection of public welfare (secondary standard). Section 109(d)(1) of the CAA requires EPA to complete a thorough review of the NAAQS at 5-year intervals and promulgate new standards when appropriate. Additionally, Section 107 of the CAA requires the establishment of air quality control regions for the purpose of implementing the NAAQS.

On October 17, 2006 (71 FR 61144), EPA revised the primary and secondary 24-hour NAAQS for fine particulate matter (PM<sub>2.5</sub>) to 35 micrograms per cubic meter and retained the primary and secondary 24-hour NAAQS for coarse particulate matter (PM<sub>10</sub>) of 150 micrograms per cubic meter. EPA revoked the annual standard for PM<sub>10</sub>. This final rule became effective on December 18, 2006.

On March 27, 2008 (73 FR 16436), EPA revised the NAAQS for ozone, setting the level of the primary and secondary 8-hour standard to 0.075 parts per million. This final ozone standard rule became effective on May 27, 2008. On October 26, 2015 (80 FR 65292), EPA revised the NAAQS for ozone, setting the level of the primary and secondary 8-hour standard to 0.070 parts per million. This final ozone standard rule became effective on December 28, 2015.

On November 12, 2008 (73 FR 66964), EPA revised the NAAQS for lead, setting the level of the primary and secondary standard to 0.15 micrograms per cubic meter and revised the averaging time to a rolling 3-month period with a maximum (not-to-be-exceeded) form, evaluated over a 3-year period. The final lead standard rule became effective on January 12, 2009.

On February 9, 2010 (75 FR 6474), EPA revised the NAAQS for oxides of nitrogen as measured by nitrogen dioxide (NO<sub>2</sub>). EPA established a 1-hour primary standard for NO<sub>2</sub> at a level of 100 parts per billion, based on the 3-year average of the 98th percentile of the

yearly distribution of 1-hour daily maximum concentrations, to supplement the existing primary and secondary annual standard of 53 parts per billion (See 61 FR 52852, October 8, 1996). The final NO<sub>2</sub> rule became effective on April 12, 2010.

On June 22, 2010 (75 FR 35520), EPA revised the NAAQS for oxides of sulfur as measured by sulfur dioxide (SO<sub>2</sub>). EPA established a new 1-hour SO<sub>2</sub> primary standard at a level of 75 parts per billion, based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. EPA also revoked both the previous 24-hour and annual primary SO<sub>2</sub> standards. EPA did not revise the existing secondary standard of 0.5 part per million averaged over 3 hours and not to be exceeded more than once per year. This final rule became effective on August 23, 2010.

On January 15, 2013 (78 FR 3086), EPA revised the primary PM<sub>2.5</sub> annual NAAQS, lowering the standard to 12.0 micrograms per cubic meter. The final rule became effective on March 18, 2013.

## **II. Summary of State Submittals**

### *A. 1993 SIP Revision*

On August 9, 1993, the Vermont Department of Environmental Conservation (VT DEC) submitted a revision to its State Implementation Plan (SIP) addressing the nonattainment new source review (NNSR) and reasonable available control technology (RACT) requirements of the 1990 Clean Air Act Amendments (1993 SIP submittal). The submittal consisted of several changes to the State's regulations as well as a SIP narrative. In 1998, EPA approved the revisions dealing with the RACT requirements. See 63 FR 19825, April 22, 1998.

In a letter dated July 13, 2016, Vermont withdrew the SIP narrative and a number of definitions that were either already approved into the SIP or were determined not to be required to be in the SIP. The State also withdrew certain provisions of APCR, Subchapter V, Sections 5–502(3), (6), and (7) because revised versions of those provisions were resubmitted by the State on February 14, 2011. We are therefore not acting on those provisions withdrawn by the State from the 1993 SIP submittal.

EPA is approving the definition of “Federally Enforceable” in Section 5–101 from the 1993 SIP submittal.

### *B. 2011 SIP Revision*

On February 14, 2011, the VT DEC submitted a revision to its SIP

addressing EPA's Greenhouse Gas Tailoring Rule, certain other aspects of the State's preconstruction permitting requirements, and certain emissions limits for sources of nitrogen oxides and sulfur dioxide (2011 SIP submittal). In 2012, EPA approved the portions of the 2011 SIP submittal that related to EPA's Greenhouse Gas Tailoring Rule. See 77 FR 60907, October 5, 2012.

In a letter dated July 13, 2016, VT DEC withdrew some, but not all, of the revisions included in the 2011 SIP submittal. The State withdrew these provisions for various reasons; either because additional information needs to be submitted before EPA could approve certain provisions into the SIP, Vermont intends in the near future to revise certain provisions and resubmit them to EPA, certain provisions were already in the SIP, or certain provisions were determined not to be required to be in the SIP.

We are approving the following provisions contained in the 2011 SIP submittal:<sup>1</sup>

a. A clarification to the definition of the term “Federal Land Manager.”

b. Provisions containing emissions limits for certain categories of sources that emit NO<sub>x</sub> and SO<sub>2</sub>. (In a letter dated July 13, 2016, Vermont submitted a technical demonstration consistent with section 110(l) of the Clean Air Act, showing that the changes to the applicability of these emissions limits will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. See EPA's TSD for a more detailed analysis.)

c. A provision clarifying what type of operations would be considered asphalt batch plants and would be required to obtain a minor new source review permit for any new or modified source.

d. Provisions clarifying Vermont's authority to request sources to submit written reports.

e. Provisions (further revised in a 2014 SIP submission) providing the State with the authority to require air dispersion modeling on a case-by-case basis for minor sources, and containing the procedures a source must follow when providing an impact analysis on ambient air quality in order for the source to obtain a PSD permit.

f. Provisions requiring sources to obtain a permit prior to construction, and providing the State with the authority to deny a permit for a project that would not be in compliance with

<sup>1</sup> For a more detailed listing of these provisions and the specific language in question, please see EPA's Technical Support Document (TSD) included in the administrative record and docket.

the state permitting regulations. (We note that these provisions are codified in the State's submittal as APCR Section 5–501(4). However, the existing approved SIP already contains an APCR Section 5–501(4) that relates to a different topic. Thus, our approval of this new APCR Section 5–501(4) will appear in the SIP after existing Section APCR 5–501(4). This codification issue arose because the State has amended its regulations over time at the state level and did not submit the entire revised regulation to EPA for approval into the SIP. EPA believes that implementation of the State's permitting program and the enforceability of these provisions as part of that program will not be compromised because the provisions will have been approved by EPA on separate dates. Thus, in future legal proceedings, a complete and accurate citation to one of these two provisions should also include the date upon which EPA approved the provision in question into Vermont's SIP in order to distinguish clearly one from the other.)

g. Provisions (further revised in a 2014 SIP revision) specifying which entities, including affected states and federal land managers, are to receive notification when a source is subject to major new source review. (We note that one of these provisions is codified in the State's submittal as APCR Section 5–501(6). However, the existing approved SIP already contains an APCR Section 5–501(6) that relates to a different topic. Thus, our approval of this new APCR Section 5–501(6) will appear in the SIP after existing APCR Section 5–501(6). This codification issue arose because the State has amended its regulations over time at the state level and did not submit the entire revised regulation to EPA for approval into the SIP. EPA believes that implementation of the State's permitting program and the enforceability of these provisions as part of that program will not be compromised because the provisions will have been approved by EPA on separate dates. Thus, in future legal proceedings, a complete and accurate citation to one of these two provisions should also include the date upon which EPA approved the provision in question into Vermont's SIP in order to distinguish clearly one from the other.)

h. A provision prohibiting a major new source or major modification from initiating construction prior to obtaining a construction permit.

i. Provisions (further revised in a 2014 SIP submittal) requiring new major sources and major modifications to conduct an air quality impact analysis.

j. Provisions containing requirements for major new sources and major

modifications that are subject to nonattainment new source review under Part D of the CAA because Vermont is located within the ozone transport region.

EPA is approving the provisions identified above in subparagraphs a. through j. See EPA's TSD for more detailed information.

### C. 2014 SIP Revision

On July 25, 2014, the VT DEC submitted a revision to its SIP primarily addressing permitting requirements for PM<sub>2.5</sub> emissions (2014 SIP submittal). In a letter dated July 13, 2016, VT DEC withdrew some, but not all, of the revisions the State requested in its 2014 SIP submittal. The State withdrew these provisions for various reasons; either because more information would be needed before certain provisions could be approved by EPA into the SIP, one provision was erroneously submitted, or Vermont intends in the near future to revise certain provisions and resubmit them to EPA.

We are approving the following contained in the State's 2014 SIP submittal:

a. Nine new and two revised definitions in APC Section 5–101 that were contained in the 2014 SIP submittal. The new definitions are of the terms: (1) "Municipal Waste Combustor Acid Gases (measured as sulfur dioxide and hydrogen chloride)"; (2) "Municipal Waste Combustor Metals (measured as particulate matter)"; (3) "Municipal Waste Combustor Organics (measured as total tetra- through octa-chlorinated debenzo-p-dioxins and dibenzofurans)"; (4) "Municipal Solid Waste Landfill Emissions (measured as nonmethane organic compounds)"; (5) "Particulate Matter Emissions"; (6) "PM<sub>10</sub>."; (7) "PM<sub>10</sub> emissions"; (8) "PM<sub>2.5</sub>."; and (9) "PM<sub>2.5</sub> direct emissions." The two revised definitions are of the terms: (1) "Significant"; and (2) "Particulate Matter."

b. A provision which removes an exemption for wood coating operations from the SIP rule for "Other Sources That Emit Volatile Organic Compounds."

c. Provisions that revise the State's Ambient Air Quality Standards for the criteria air pollutants.<sup>2</sup>

d. Provisions that (as stated earlier) contain requirements for sources to follow when submitting an ambient air

<sup>2</sup> Because the state adopted these state ambient air quality standards in 2014, Vermont's regulations do not contain an ambient air quality standard for ozone that is equivalent to the federal 2015 ozone standard. However, the ozone standard we are approving is consistent with the 2008 federal ozone standard.

impact analysis in relation to a PSD permit. The revision was made to clarify that a source's analysis must follow EPA's procedures at 40 CFR part 51, Appendix W.

e. Provisions that slightly revise the requirements that apply to a new or modified source that otherwise would have been subject to minor new source review to be classified as major based on the impact on ambient air from the source's allowable emissions.

f. Provisions (as stated earlier) require the State to notify certain entities of a proposed PSD permit, including affected states and federal land managers.

g. Provisions (as stated earlier) that require sources subject to PSD to conduct and submit an ambient air quality impact analysis.

h. A provision that requires a source subject to PSD to demonstrate that it will not cause an adverse impact on visibility or any air quality related value in any Class I area.

(i) A provision requiring a source subject to PSD to gather ambient monitoring data representative of the area in which the source is located. (We note that this provision is codified at APCR Section 5–502(8)(b) of the State's regulation and will be approved into the SIP with that same codification. Because the codification of, and provisions contained in, the State's regulations have changed over the years, and the State's 2014 SIP submittal did not include all of the State's current ambient air quality monitoring provisions, APCR Section 5–502(8)(b) will appear after and separately from the already approved SIP revisions in APCR Section 5–502(7), which also relate to ambient air quality monitoring; the one exception is that the current SIP provision at APCR Section 5–502(7)(b) will no longer be in the SIP because it is being replaced by APCR 5–502(8)(b). EPA believes that implementation of the State's permitting program and the enforceability of these provisions as part of that program will not be compromised because the provisions will have been approved by EPA on separate dates. Thus, in future legal proceedings, a complete and accurate citation to these provisions should also include the date upon which EPA approved the provision in question into Vermont's SIP in order to distinguish clearly one from the other.)

### III. Final Action

Based on the analysis contained in the Technical Support Document, EPA is approving the following sections of Vermont's APCR:

*Within APCR Subchapter I:*

## Definitions:

1. "Federal Land Manager"
2. "Federally Enforceable"
3. "Municipal Waste Combustor Acid Gases (measured as sulfur dioxide and hydrogen chloride)"
4. "Municipal Waste Combustor Metals (measured as particulate matter)"
5. "Municipal Waste Combustor Organics (measured as total tetra-through octa-chlorinated debenzo-p-dioxins and dibenzofurans)"
6. "Municipal Solid Waste Landfill Emissions (measured as nonmethane organic compounds)"
7. "Particulate Matter"
8. "Particulate Matter Emissions"
9. "PM<sub>10</sub>"
10. "PM<sub>10</sub> emissions"
11. "PM<sub>2.5</sub>"
12. "PM<sub>2.5</sub> direct emissions"
13. "Significant"

*Within APCR Subchapter II:*

## Prohibitions:

1. *Section 5-5-251*: Control of Nitrogen Oxide Emissions.
2. *Section 5-252*: Control of Sulfur Dioxide Emissions.

3. *Section 5-253.20(a)(3)*:

Applicability for Other Sources That Emit Volatile Organic Compounds.

*Within APCR Subchapter III: Ambient Air Quality Standards:*

1. *Section 5-301*: Scope.
2. *Section 5-302*: Sulfur oxides (sulfur dioxide).
3. *Section 5-303*: Reserved.
4. *Section 5-304*: Particulate Matter PM<sub>2.5</sub>.
5. *Section 5-306*: Particulate Matter PM<sub>10</sub>.
6. *Section 5-307*: Carbon Monoxide.
7. *Section 5-308*: Ozone.
8. *Section 5-309*: Nitrogen Dioxide.
9. *Section 5-310*: Lead.

*Within APCR Subchapter IV:*

## Operations and Procedures:

1. *Section 4-401(2)*: Hot Mix Asphalt Batch Plants.
2. *Section 4-402*: Written Reports When Requested.
3. *Section 5-406*: Required Air Modeling.

*Within APCR Subchapter V: Review of New Air Contaminant Sources:*

1. *Section 5-501*: Review of Construction or Modification of Air Contaminant Sources. EPA is approving subsections (1), (4), (5), (6), and (7)(c) of this section.
2. *Section 5-502*: Major Stationary Sources and Major Modifications: EPA is approving subsections (2), (4)(a), (4)(b), (4)(e), (6)(b), and (8)(b).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse

comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective September 30, 2016 without further notice unless the Agency receives relevant adverse comments by August 31, 2016.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 30, 2016 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Vermont's Air Pollution Control Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov>.

**V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and



the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**,

rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 20, 2016.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### EPA-APPROVED VERMONT REGULATIONS

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et seq.*

#### Subpart UU—Vermont

■ 2. In § 52.2370(c) the Table “EPA Approved Vermont Regulations” is amended by:

■ a. Revising state citation entries for Sections 5–101, 5–251, 5–252, 5–253.20, 5–301, 5–302, 5–303, 5–306, 5–307, 5–308, 5–309, 5–310, 5–401, 5–402, 5–406, 5–501, and 5–502; and

■ b. Adding state citation entries Sections 5–304 and 5–305.

The revisions and additions read as follows:

#### § 52.2370 Identification of plan.

\* \* \* \* \*

(c) *EPA approved regulations.*

State citation	Title/subject	State effective date	EPA approval date	Explanations
* * *	* * *		* * *	
Section 5–101 .....	Definitions .....	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	Revised three definitions and added 10 new definitions.
* * *	* * *		* * *	
Section 5–251 .....	Control of nitrogen oxides emissions.	2/8/2011	8/1/2016 [Insert <b>Federal Register</b> citation].	Revised the applicability section.
Section 5–252 .....	Control of sulfur dioxide emissions.	2/8/2011	8/1/2016 [Insert <b>Federal Register</b> citation].	Revised the applicability section.
* * *	* * *		* * *	
Section 5–253.20 .....	Other sources that emit volatile organic compounds.	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	Removed the exemption for surface coating of wood.
* * *	* * *		* * *	
Section 5–301 .....	Scope .....	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	The air quality standard for sulfates is not part of the SIP.
Section 5–302 .....	Sulfur oxides (sulfur dioxide).	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	Revision addresses the SO <sub>2</sub> NAAQS adopted in 2010.
Section 5–303 .....	Reserved .....	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	The secondary standard for SO <sub>2</sub> is now contained in Section 5–302.
Section 5–304 .....	Particulate matter PM <sub>2.5</sub>	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	New section addresses the 2006 primary and secondary 24-hr standard and the 2013 primary annual standard for the PM <sub>2.5</sub> NAAQS.
Section 5–306 .....	Particulate matter PM <sub>10</sub>	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	Removed the annual standard to be consistent with the 2006 PM <sub>10</sub> NAAQS.
Section 5–307 .....	Carbon monoxide .....	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	Clarified language to be consistent with EPA.
Section 5–308 .....	Ozone .....	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	Revision addresses the Ozone NAAQS adopted in 2008.



## EPA-APPROVED VERMONT REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Section 5–309 .....	Nitrogen dioxide .....	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	Revision addresses the NO <sub>2</sub> NAAQS adopted in 2010.
Section 5–310 .....	Lead .....	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	Revision addresses the Lead NAAQS adopted in 2008.
* .....	* .....	*	*	*
Section 5–401 .....	Classification of air contaminant sources.	2/8/2011	8/1/2016 [Insert <b>Federal Register</b> citation].	Amended the source category for asphalt batch plants.
Section 5–402 .....	Written reports when requested.	2/8/2011	8/1/2016 [Insert <b>Federal Register</b> citation].	
* .....	* .....	*	*	*
Section 5–406 .....	Required air modeling	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	Clarified air dispersion modeling must be done in accordance with 40 CFR part 51, Appendix W.
Section 5–501 .....	Review of construction or modification of air contaminant sources.	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	Only approving: revisions made to subsections (1) and (5); new provisions (4), and (6) even though existing subsection 4 and 6 will remain in the SIP; and new introductory text in subsection (7), and new text in subsection (7)(c).
Section 5–502 .....	Major stationary sources and major modifications.	7/5/2014	8/1/2016 [Insert <b>Federal Register</b> citation].	Approving only revisions made to subsections (2), (4)(a), (4)(b), (4)(e), and (6)(b) and adding a new subsection (8)(b). Also removing subsection (7)(b). Subsections (7) and (8) both relate to ambient air quality monitoring.
* .....	* .....	*	*	*

[FR Doc. 2016–18158 Filed 7–29–16; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA–R09–OAR–2016–0262; FRL–9948–10–Region 9]****Approval of California Air Plan Revisions, Placer County Air Pollution Control District and Ventura County Air Pollution Control District****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Placer County Air Pollution Control District (PCAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO<sub>x</sub>) and carbon monoxide (CO) emissions from stationary gas turbines, boilers, steam generators, and process heaters. We are approving local rules

that regulate these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on September 30, 2016 without further notice, unless the EPA receives adverse comments by August 31, 2016. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0262 at <http://www.regulations.gov>, or via email to Andrew Steckel, Rules Office Chief, at [Steckel.Andrew@epa.gov](mailto:Steckel.Andrew@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gong, EPA Region IX, (415) 972 3073, [Gong.Kevin@epa.gov](mailto:Gong.Kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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C. EPA Recommendations To Further Improve the Rules  
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## I. The State's Submittal

### A. What rules did the State submit?

Table 1 lists the rules addressed by this action with the dates that they were

adopted by the local air agencies and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Date of local action	Submitted
PCAPCD .....	250	Stationary Gas Turbines .....	Amended 10/8/2015 .....	03/11/2016
VCAPCD .....	74.15.1	Boilers, Steam Generators, and Process Heaters.	Revised 6/23/2015 .....	11/13/2015

On January 19, 2016, the EPA determined that the submittal for VCAPCD Rule 74.15.1 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On April 19, 2016, the EPA determined that the submittal for PCAPCD Rule 250 met the completeness criteria.

### B. Are there other versions of these rules?

We approved an earlier version of PCAPCD Rule 250 into the SIP on August 23, 1995, in 60 FR 43713, and an earlier version of VCAPCD Rule 74.15.1 into the SIP on May 19, 2014, in 79 FR 28612.

### C. What is the purpose of the submitted rule revisions?

NO<sub>x</sub> helps produce ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO<sub>x</sub> emissions. PCAPCD Rule 250 and VCAPCD Rule 74.15.1 both limit the emissions of NO<sub>x</sub> from their respective source categories. The revisions to PCAPCD Rule 250 include the removal of exemptions for emissions resulting from startup and shutdown operations, and simplification of the emission limits for stationary gas turbines. VCAPCD Rule 74.15.1 updates the testing regime and clarifies several exemptions for boilers, steam generators, and process heaters.

The EPA's technical support documents (TSDs) have more information about these rules.

## II. The EPA's Evaluation and Action

### A. How is the EPA evaluating the rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater

emissions reductions (see CAA section 193).

SIP provisions cannot include exemptions from emission limitations for emissions during startup, shutdown, and malfunction (SSM) events. Thus, in order to be permissible in a SIP, emission limitations must apply continuously, *i.e.*, they cannot include periods during which emissions are legally or functionally exempt from regulation (see CAA sections 110(a)(2) and 302(k)). EPA recently clarified this requirement for periods of startup, shutdown, and malfunction. See *Restatement and Update of EPA's SSM Policy Applicable to SIPs*, 80 FR 33839 (June 12, 2015).

Generally, SIP rules must require reasonably available control technology (RACT) for each major source of NO<sub>x</sub> in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2) and 182(f)). PCAPCD regulates an ozone nonattainment area classified as Severe for the 1994 1-hour ozone National Ambient Air Quality Standard (NAAQS), and for the 1997 and 2008 8-hour ozone NAAQS (40 CFR 81.305). VCAPCD also regulates an ozone nonattainment area classified as Severe for the 1994 1-hour ozone NAAQS and for the 1997 and 2008 8-hour ozone NAAQS (40 CFR 81.305). Therefore, PCAPCD Rule 250 and VCAPCD Rule 74.15.1 must both implement RACT as the Districts regulate ozone nonattainment areas classified as Severe.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (57 FR 13498, April 16, 1992 and 57 FR 18070, April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" ("the Bluebook," U.S. EPA, May 25, 1988; revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule

Deficiencies" ("the Little Bluebook", EPA Region 9, August 21, 2001).

4. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule" ("the NO<sub>x</sub> Supplement," 57 FR 55620, November 25, 1992).
5. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Stationary Gas Turbines," (EPA-453/R-93-007), Emissions Standards Division, EPA OAQPS, January 1993.
6. "Control Techniques for Nitrogen Oxides Emissions from Stationary Sources—Second Edition," (EPA-450/1-78-001), January 1978.
7. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Process Heaters (Revised)," (EPA-453/R93-034), September 1993.
8. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters," California Air Resources Board RACT/BARCT guidance, July 18, 1991.
9. "Restatement and Update of EPA's SSM Policy Applicable to SIPs," 80 FR 33839, June 12, 2015.

### B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, SIP relaxations, and requirements for emissions that occur during SSM events. The TSDs have more information on our evaluation.

### C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules but are not currently the basis for rule disapproval.

### D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, the EPA is fully approving the submitted rules because we believe they

fulfill all relevant requirements.<sup>1</sup> We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by August 31, 2016, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 30, 2016. This will incorporate these rules into the federally enforceable SIP.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the PCAPCD and VCAPCD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at U.S. Environmental Protection Agency Region IX (Air-4), 75 Hawthorne Street, San Francisco, CA, 94105–3901.

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of

Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 14, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

#### Subpart F—California

- 2. Section 52.220 is amended by adding paragraphs (c)(202)(i)(E)(3), (c)(429)(i)(A)(6), (c)(472)(i)(B), and (c)(474) to read as follows:

#### § 52.220 Identification of plan—in part.

\* \* \* \* \*

(c) \* \* \*

(202) \* \* \*

<sup>1</sup> Upon the effective date of this final action, submitted PCAPCD Rule 250 would supersede existing PCAPCD Rule 250, approved at 60 FR 43713 in the applicable SIP. Submitted VCAPCD Rule 74.15.1 would supersede existing VCAPCD Rule 74.15.1, approved at 79 FR 28612.

(i) \* \* \*

(E) \* \* \*

(3) Previously approved on August 23, 1995, in paragraph (c)(202)(i)(E)(1) of this section, and now deleted with replacement in (c)(474)(i)(A)(1), Rule 250, “Stationary Gas Turbines,” adopted on October 17, 1994.

\* \* \* \* \*

(429) \* \* \*

(i) \* \* \*

(A) \* \* \*

(6) Previously approved on May 19, 2014, in paragraph (c)(429)(i)(A)(3) of this section and now deleted with replacement in (c)(472)(i)(B)(1), Rule 74.15.1, “Boilers, Steam Generators, and Process Heaters,” amended on September 11, 2012.

\* \* \* \* \*

(472) \* \* \*

(i) \* \* \*

(B) Ventura County Air Pollution Control District.

(1) Rule 74.15.1, “Boilers, Steam Generators, and Process Heaters,” revised June 23, 2015.

\* \* \* \* \*

(474) New and amended regulations were submitted on March 11, 2016, by the Governor’s designee.

(i) Incorporation by reference.

(A) Placer County Air Pollution Control District.

(1) Rule 250, “Stationary Gas Turbines,” amended on October 8, 2015.

[FR Doc. 2016–17912 Filed 7–29–16; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R07–OAR–2015–0581; FRL–9949–68–Region 7]

### Approval of Missouri’s Air Quality Implementation Plans; Regional Haze State Implementation Plan Revision and 2013 Five-Year Progress Report

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve the Missouri State Implementation Plan (SIP) revision submitted to EPA by the State of Missouri on August 5, 2014, documenting that the State’s existing plan is making adequate progress to achieve visibility goals by 2018. The Missouri SIP revision addressed the Regional Haze Rule (RHR) requirements under the Clean Air Act (CAA or Act)

to submit a report describing progress in achieving reasonable progress goals (RPGs) to improve visibility in Federally designated areas in nearby states that may be affected by emissions from sources in Missouri. EPA is taking final action to approve Missouri’s determination that the existing Regional Haze (RH) SIP is adequate to meet the visibility goals and requires no substantive revision at this time.

**DATES:** This final rule is effective August 31, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2015–0581. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office’s official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

#### FOR FURTHER INFORMATION CONTACT:

Amy Algae-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7942, or by email at [algae-eakin.amy@epa.gov](mailto:algae-eakin.amy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” or “our” refer to EPA. This section provides additional information by addressing the following:

I. Background

II. Summary of SIP Revision

III. Final Action

IV. Statutory and Executive Order Reviews

#### I. Background

On September 29, 2015, (80 FR 58410), EPA published a notice of proposed rulemaking (NPR) for the State of Missouri. In the NPR, EPA proposed approval of Missouri’s progress report SIP, a report on progress made in the first implementation period towards RPGs for Class I areas that are affected by emissions from Missouri sources. This progress report SIP and

accompanying cover letter also included a determination that Missouri’s existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018.

States are required to submit a progress report in the form of a SIP revision every five years that evaluates progress towards the RPGs for each mandatory Class I Federal area within the state and in each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. See 40 CFR 51.308(g). In addition, the provisions under 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of the adequacy of the state’s existing regional haze SIP. The first progress report SIP is due five years after submittal of the initial regional haze SIP. The Missouri Department of Natural Resources (MDNR) submitted its regional haze SIP on August 5, 2009, and a supplement on January 30, 2012, in accordance with 40 CFR 51.308(b).<sup>1</sup>

On February 14, 2014, MDNR provided to the Federal Land Managers a revision to Missouri’s SIP reporting on progress made during the first implementation period toward RPGs for Class I areas in the state and Class I areas outside the state that are affected by Missouri sources. Missouri has two Class I areas, Mingo National Wildlife Refuge (Mingo) and Hercules Glades Wilderness Area (Hercules Glades). Missouri also hosts an additional

<sup>1</sup> On June 26, 2012, EPA finalized a limited approval of Missouri’s August 5, 2009, regional haze SIP to address the first implementation period for regional haze (77 FR 38007). In a separate action, published on June 7, 2012 (77 FR 33642), EPA finalized a limited disapproval of the Missouri regional haze SIP because of the State’s reliance on the Clean Air Interstate Rule to meet certain regional haze requirements, which EPA replaced in August 2011 with the Cross-State Air Pollution Rule (CSAPR) (76 FR 48208 (Aug. 8, 2011)). In the aforementioned June 7, 2012, action, EPA finalized a Federal Implementation Plan (FIP) for Missouri to replace the State’s reliance on CAIR with reliance on CSAPR. Following these EPA actions, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P. v. EPA* (“*EME Homer City*”), 696 F. 3d 7 (D.C. Cir. 2012), vacating CSAPR and keeping CAIR in place pending the promulgation of a valid replacement rule. On April 29, 2014, the U.S. Supreme Court reversed the D.C. Circuit opinion vacating CSAPR, and remanded the case for further proceedings. *EME Homer City*, 572 U.S. 134 S. Ct. 1584. In the interim, CAIR remained in place. On October 23, 2014, the D.C. Circuit granted EPA’s motion to lift the stay on CSAPR. Order of October 23, 2014, in *EME Homer City*, D.C. Cir. No. 11–1302. EPA issued an interim final rule to clarify how EPA will implement CSAPR consistent with the D.C. Circuit’s order. 79 FR 71663 (December 3, 2014) (interim final rulemaking). Subsequent to the interim final rulemaking, EPA began implementation of CSAPR on January 1, 2015.

Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring site, located at El Dorado Springs.<sup>2</sup> Notification was published on MDNR's Air Pollution Control Program Web site on April 28, 2014. A public hearing was held on held at the St. Louis Regional Office on Thursday, May 29, 2014.

On August 5, 2014, MDNR submitted the five year progress report SIP to EPA. This progress report SIP and accompanying cover letter also included a determination that the state's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018. EPA proposed approval of Missouri's progress report SIP on the basis that it satisfies the requirements of 40 CFR 51.308(g) and (h).

## II. Summary of SIP Revision

On August 5, 2014, MDNR submitted a revision to Missouri's regional haze SIP to address progress made toward RPGs of Class I areas in the state and Class I areas outside the state that are affected by emissions from Missouri's sources. This progress report SIP also included a determination of the adequacy of the state's existing regional haze SIP. Missouri has two Class I areas within its borders, and maintains an additional IMPROVE monitoring site. MDNR utilized particulate matter source apportionment (PSAT) techniques for photochemical modeling conducted by the Central Regional Air Planning Association (CENRAP) to identify two Class I areas in nearby Arkansas potentially impacted by Missouri sources: Upper Buffalo Wilderness Area (UBWA) and Caney Creek Wilderness Area (CCWA).

The provisions in 40 CFR 51.308(g) require a progress report SIP to address seven elements. In the NPR, EPA proposed to approve the SIP as adequately addressing each element under 40 CFR 51.308(g). The seven elements and EPA's proposed conclusions in the NPR are briefly summarized below.

The provisions in 40 CFR 51.308(g) require progress report SIPs to include a description of the status of measures in the regional haze implementation plan; a summary of the emissions reductions achieved; an assessment of the visibility conditions for each Class

I area in the state; an analysis of the changes in emissions from sources and activities within the state; an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded visibility improvement progress in Class I areas impacted by the state's sources; an assessment of the sufficiency of the regional haze implementation plan to enable states to meet reasonable progress goals; and a review of the state's visibility monitoring strategy. As explained in detail in the NPR, EPA proposed Missouri's progress report SIP addressed each element and therefore satisfied the requirements under 40 CFR 51.308(g).

In addition, pursuant to 40 CFR 51.308(h), states are required to submit, at the same time as the progress report SIP revision, a determination of the adequacy of their existing regional haze SIP and to take one of four possible actions based on information in the progress report. In its progress report SIP, Missouri determined that its regional haze SIP is sufficient to meet its obligations related to the reasonable progress goals for Class I areas affected by Missouri's sources. The State accordingly provided EPA with a negative declaration that further revision of the existing regional haze implementation plan was not needed at this time. *See* 40 CFR 51.308(h)(1). As explained in detail in the NPR, EPA proposed to determine that Missouri had adequately addressed 40 CFR 51.308(h) because the visibility data trends at the Class I areas impacted by Missouri's sources and the emissions trends of the largest emitters in Missouri of visibility-impairing pollutants both indicate that the reasonable progress goals for 2018 for these areas will be met or exceeded. Therefore, in our NPR, EPA proposed to approve Missouri's progress report SIP as meeting the requirements of 40 CFR 51.308(g) and (h).

## III. Final Action

EPA is taking final action to approve Missouri's regional haze five-year progress report and SIP revision, submitted August 5, 2014, as meeting the applicable regional haze requirements as set forth in 40 CFR 51.308(g) and (h).

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

<sup>2</sup> The El Dorado Springs IMPROVE monitoring site is a Protocol monitoring site that is maintained by MDNR to also measure visibility impairment in Missouri, but it is not located in a Federal Class I area. It was established to aid in determining impacts to portions of the country where no Class I areas exist.

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 18, 2016.

**Mark Hague,**

*Regional Administrator, Region 7.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et. seq.*

### Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (e) is amended by adding the entry “(70) State Implementation Plan (SIP) Revision for the Attainment and Maintenance of National Ambient Air Quality Standards for Regional Haze (2014 Five-Year Progress Report)” in numerical order to read as follows:

#### § 52.1320 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

### EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
(70) State Implementation Plan (SIP) Revision for the Attainment and Maintenance of National Ambient Air Quality Standards for Regional Haze (2014 Five-Year Progress Report).	Statewide .....	8/5/14	8/1/16 [Insert <b>Federal Register</b> citation].	[EPA–R07–OAR–2015–0581; FRL–9949–68–Region 7].

[FR Doc. 2016–17785 Filed 7–29–16; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R01–OAR–2014–0291, FRL–9949–58–Region 1]

### Air Plan Approval; Maine: Prevention of Significant Deterioration; PM<sub>2.5</sub>

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to fully approve revisions to the State of Maine’s State Implementation Plan (SIP) relating to the regulation of fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometer, generally referred to as “PM<sub>2.5</sub>”) within the context of Maine’s Prevention of Significant Deterioration (PSD) program. EPA is also taking direct final action on other minor changes to Maine’s PSD

program. Actions related to this direct final rulemaking are being taken in accordance with the Clean Air Act (CAA).

**DATES:** This direct final rule is effective September 30, 2016, unless EPA receives adverse comments by August 31, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OAR–2014–0291 at <http://www.regulations.gov>, or via email to [bird.patrick@epa.gov](mailto:bird.patrick@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Patrick Bird, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912; telephone number: (617) 918–1287; email address: [bird.patrick@epa.gov](mailto:bird.patrick@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Analysis of Maine’s SIP Revisions
- III. Description of Codification Issues in Maine’s SIP
- IV. Final Action
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

## I. Background and Purpose

The State of Maine PSD program is established in 06–096 Code of Maine Regulations (CMR), Chapter 100 (Definitions Regulation), Chapter 113 (Growth Offset Regulation), and Chapter 115 (Major and Minor Source Air Emission License Regulations). Maine implements its PSD program requirements under Chapter 115. Revisions to the PSD program were last approved into the Maine SIP on February 14, 1996 (61 FR 5690). Maine has authority to issue and enforce PSD permits under its SIP-approved PSD program.

On February 14, 2013, the State of Maine Department of Environmental Protection (DEP) submitted a formal revision to its SIP. The SIP revision included the amendments to certain portions of Chapter 100 and Chapter 115 to incorporate PM<sub>2.5</sub> into the PSD permitting program. On May 31, 2016, Maine DEP submitted additional revisions to its PSD program for SIP approval, which includes minor changes to: (1) The Chapter 100 definition of “ambient increment;” (2) a portion of the Chapter 100 definition of “regulated pollutant;” and (3) the Chapter 100 definition of “significant emissions increase.” Pursuant to section 110 of the CAA, EPA is approving these revisions into the Maine SIP.

## II. Analysis of Maine’s SIP Revisions

EPA performed a review of Maine’s proposed revisions and has determined that they are consistent with EPA’s PSD program regulations. Maine submitted for approval amendments to the definition of “ambient increment” at Chapter 100.11, amendments to the definition of “baseline concentration” at Chapter 100.16, a new definition for “PM<sub>2.5</sub>” at Chapter 100.133, amendments to the definition of “PM<sub>10</sub>” at Chapter 100.134, amendments to a portion of the definition of “regulated pollutant” at Chapter 100.149(I); and amendments to the definition of “significant emissions increase” at Chapter 100.156. Maine also submitted amendments to the section of Chapter

115 related to “innovative control technology waivers” and also added a section to Chapter 115 relating to major new and modified source growth analyses.

The previously SIP-approved definition of “ambient increment” has been amended to include PM<sub>2.5</sub> as a pollutant of consideration and to add specificity related to the time period that must be considered when determining existing source baseline emissions for PM<sub>2.5</sub>, PM<sub>10</sub>, sulfur dioxide (SO<sub>2</sub>), and nitrogen dioxide (NO<sub>2</sub>). These changes are relevant to conducting an increment consumption analysis under the State’s PSD permit program.

Maine’s approach in determining baseline emissions for purposes of an increment consumption analysis remains unchanged when compared to the previously approved provisions in Maine’s SIP. The SIP revisions we are approving in this document adds PM<sub>2.5</sub> as an additional pollutant to consider when conducting an increment analysis, and clarifies in the definition of “ambient increment,” the emissions baseline years used in the analyses for each covered pollutant. Although Maine’s approach to establishing a baseline emissions concentration as part of an increment consumption analysis differs to some extent from the approach taken under the federal PSD regulations codified at 40 CFR 51.166, EPA has determined that those minor differences do not result in a different baseline emissions concentration calculation and Maine’s approach is therefore functionally equivalent to the federal PSD regulations. For example, Maine’s regulation identifies a specific year, *e.g.*, 2010 for PM<sub>2.5</sub>, to be used to calculate baseline emissions concentrations for an increment consumption analysis. Although the approach taken under the federal PSD regulations would result in the use of a slightly different time period for calculating baseline emissions, EPA has analyzed the relevant permitting transactions using Maine’s time period and the federal PSD regulations’ time period and concluded that the calculation yields the same result in each case. Thus, the baseline emissions calculation for PM<sub>2.5</sub> under Maine’s regulation yields the same result calculated under the federal PSD regulations.

The definition of “baseline concentration” at Chapter 100.16 has been amended to include a reference to PM<sub>2.5</sub> as a pollutant of consideration. The definition has also been revised in terms of formatting when compared to the previously SIP-approved definition. The PM<sub>2.5</sub> baseline concentration date is

October 20, 2010, meaning the actual emissions representative of sources in existence on that date shall be included in determining the ambient baseline concentration for purposes of an increment determination. Emissions increases and decreases after the baseline concentration date shall impact available increment in the baseline concentration area. In a note to the definition of “baseline concentration,” Maine states the baseline area is considered to be the entire State of Maine, which is consistent with how Maine’s PSD program has functioned in previous EPA SIP-approved versions.

Maine’s SIP revision also adds a definition of “PM<sub>2.5</sub>” at Chapter 100.133. The definition is consistent with EPA’s treatment of PM<sub>2.5</sub> in the definition of “Regulated NSR Pollutant” at 40 CFR 51.166(b)(49)(i)(a), with one exception. EPA’s definition of “regulated air pollutant” states, among other things, that “PM<sub>2.5</sub> and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.” EPA’s definition also states that “[o]n or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits.” Maine’s definition of PM<sub>2.5</sub> became effective as state law on December 1, 2012, and therefore does not include EPA’s January 1, 2011 date. Maine DEP has confirmed in a communication with EPA Region 1 that Maine’s definition requires consideration of condensable particulate matter as of the effective date of the State’s regulation (there is no explicit date at all included in Maine’s definition). EPA believes this is a reasonable approach. Maine’s definition of PM<sub>2.5</sub> also includes clarification as to how PM<sub>2.5</sub> is to be measured and designated, by cross referencing 40 CFR part 50, appendix L (Reference Method for the Determination of Fine Particulate Matter as PM<sub>2.5</sub> in the Atmosphere) and 40 CFR part 53 (Ambient Air Monitoring Reference And Equivalent Methods). We are approving Maine’s definition of PM<sub>2.5</sub>.

Revisions to the Maine SIP also includes an amendment to the definition of “PM<sub>10</sub>” at Chapter 100.134. As with Maine’s definition of PM<sub>2.5</sub>, Maine’s definition of PM<sub>10</sub> is consistent with EPA’s treatment of PM<sub>2.5</sub> in the definition of “Regulated NSR Pollutant” at 40 CFR 51.166(b)(49)(i)(a), with the one exception regarding the date after which condensable particulate matter must be considered for purposes of PSD permitting. Again, EPA believes that



Maine's approach is a reasonable one. Similar to the State's definition of "PM<sub>2.5</sub>," Maine's definition of PM<sub>10</sub> includes clarification as to how PM<sub>10</sub> is to be measured and designated, by cross referencing 40 CFR part 50, appendix J (Reference Method for the Determination of Fine Particulate Matter as PM<sub>10</sub> in the Atmosphere) and 40 CFR part 53 (Ambient Air Monitoring Reference And Equivalent Methods). We are approving Maine's definition of PM<sub>10</sub>.

A portion of the definition of "regulated pollutant" at Chapter 100.149(I) is being amended to clarify what precursor pollutants are to be regulated under Maine's PSD permitting program. Maine's treatment of SO<sub>2</sub> and NO<sub>x</sub> as precursors to PM<sub>2.5</sub> and volatile organic compounds and NO<sub>x</sub> as precursors to ozone is consistent with EPA's treatment of these respective precursors for purposes of PSD permitting as found in the federal definition of "Regulated NSR Pollutant" at 40 CFR 51.166(b)(49)(i)(b).

The definition of "significant emissions increase" at Chapter 100.156 is being revised to include significant emissions increase rates for PM<sub>2.5</sub> and precursors to PM<sub>2.5</sub> (NO<sub>x</sub> and SO<sub>2</sub>). This revision to Maine's SIP is consistent with the federal definitions of "Significant" at 40 CFR 51.166(b)(23)(i) and "Significant emissions increase" at 40 CFR 51.166(b)(39).

Chapter 115 has been amended to include revised text to the State's "Innovative control technology waiver" provision at Chapter 115(4)(A)(4)(f)(i)(d)(iii). The innovative control technology provision of EPA's PSD program is an optional element found at 40 CFR 51.166(s) and allows for an owner or operator to request approval for a system of innovative pollution control. Maine's amendment adds a provision which states that PM<sub>10</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, or NO<sub>2</sub> emissions may not significantly impact any nonattainment areas during the time period the new or modified source is reducing continuous emissions to a rate greater than or equal to the rate that would have been required by virtue of a best available control technology (BACT) determination. We are approving this amendment to Maine's "Innovative control technology waiver" provision because it is consistent with the intent of EPA's PSD regulations.

Maine has requested an additional provision to be approved into the SIP at Chapter 115(4)(A)(4)(h), entitled "Growth Analysis." The Maine provision requires a permit applicant to provide an analysis of air quality impacts from all general, commercial,

residential, industrial, and other growth in areas affected by a major modification or a major new source. This provision aligns with EPA's regulations at 40 CFR 51.166(n)(3)(ii) and (o)(2). In conjunction with Maine's definition of "ambient increment" at Chapter 100.11, "baseline concentration" at Chapter 100.16, and Maine's air quality impact analyses requirements contained in Chapter 115, Maine's additional provision satisfies requirements to conduct an ambient increment determination, as specified in EPA's regulation at 40 CFR 51.166(k)(1)(ii). We are approving this provision into Maine's SIP.

### III. Description of Codification Issues in Maine's SIP

The State of Maine regulations found within 06–096 CMR Chapters 100 and 115 have been amended numerous times under state law since they were originally approved into the SIP. Not all of these state law amendments were submitted to EPA as formal SIP revisions. These "state-only" amendments resulted in new text being added, existing text being rearranged, and, in some cases, changes to how Maine regulations are codified. Due to such "state-only" amendments to Chapters 100 and 115, there are instances where the state regulation being submitted for approval into the SIP at this time does not mesh precisely within the existing codification structure of the Maine SIP. As a matter of substantive legal requirements, however, the regulations approved into the Maine SIP, including those we are approving today, are harmonious and clear.

Below, we describe exactly how each definition and provision we are approving into Maine's SIP through this document will be incorporated into the SIP. In certain instances, the amendments to the SIP are straightforward and need no detailed explanation. In other instances, however, we explain below for purposes of clarity how the amendments mesh with the existing SIP's structure and codification.

In the existing Maine SIP, the definition of "ambient increment" is codified at Chapter 100.11. The revised definition of "ambient increment" being acted on in this document is also codified at Chapter 100.11. The revised definition will supplant the existing definition at Chapter 100.11.

In the existing Maine SIP, the citations for "baseline concentration," "PM<sub>10</sub>," and "significant emissions increase" do not coincide with the citations of those terms being approved

in this document. The existing citation for "baseline concentration" is "Chapter 100.15;" the existing citation for "PM<sub>10</sub>" is "Chapter 100.122" and; the existing citation for "significant emissions increase" is "Chapter 100.144." The action we are taking in this document will involve removing the text of the former definitions of "baseline concentration," "PM<sub>10</sub>," and "significant emissions increase" from Chapter 100.15, 100.122, and Chapter 100.144, respectively, and indicate those removals by using the term "reserved" in those locations of the Maine SIP.

The revised definitions of "baseline concentration," "PM<sub>10</sub>," and "significant emissions increase" that we are approving in this document will be codified in the Maine SIP as Chapter 100.16, Chapter 100.134, and Chapter 100.156, respectively, in the same manner that they are codified under current state regulation. This change, however, results in two different terms (with correspondingly different definitions), each of which has an identical codification.

Specifically, "Chapter 100.16" will now be the correct citation for two different terms, as follows. Prior to our approval in this document of Maine's revise definition of "baseline concentration," Chapter 100.16 was the SIP citation for the term "Begin actual construction." After our approval in this document of Maine's revise definition of "baseline concentration," Chapter 100.16 will be the correct SIP citation for two separate terms and their definitions: (1) "Begin actual construction"; and (2) "Baseline concentration." EPA believes that implementation of the State's permitting program and the enforceability of these terms as part of that program will not be compromised because the content of the two definitions clearly is different and will have been approved by EPA on separate dates. Thus, in future legal proceedings, a complete and accurate citation to one of these two definitions should also include the date upon which EPA approved the definition in question into Maine's SIP in order to distinguish clearly one from the other. This result was necessary because Maine did not submit its entire revised Chapter 100 to EPA for approval into the SIP.

The revised definition of "PM<sub>10</sub>" that we are approving in this document will be codified in the Maine SIP as Chapter 100.134. Chapter 100.134 will now be the correct citation for two different terms, as follows. Prior to our approval in this document of Maine's revise definition of "PM<sub>10</sub>," Chapter 100.134



was the SIP citation for the term “Recovery boiler.” After our approval in this document of Maine’s definition of “PM<sub>10</sub>,” Chapter 100.134 will be the correct SIP citation for two separate terms and their definitions: (1) “PM<sub>10</sub>”; and (2) “Recovery Boiler.” EPA believes that implementation of the State’s permitting program and the enforceability of these terms as part of that program will not be compromised because the content of the two definitions clearly is different and will have been approved by EPA on separate dates. Thus, a complete and accurate citation in a future legal proceeding to one of these two definitions should also include the date upon which EPA approved the specific definition in question into Maine’s SIP in order to distinguish clearly one from the other. This result was necessary because Maine did not submit its entire revised Chapter 100 to EPA for approval into the SIP.

The revised definition of “significant emissions increase” that we are approving in this document will be codified in the Maine SIP as Chapter 100.156. Chapter 100.156 will now be the correct citation for two different terms, as follows. Prior to our approval in this document of Maine’s revised definition of “Significant emissions increase,” Chapter 100.156 was the SIP citation for the term “Title I Modification.” After our approval in this document of Maine’s definition of “Significant emissions increase,” Chapter 100.156 will be the correct SIP citation for two separate terms and their definitions: (1) “Significant emissions increase”; and (2) “Title I Modification.” EPA believes that implementation of the State’s permitting program and the enforceability of these terms as part of that program will not be compromised because the content of the two definitions clearly is different and will have been approved by EPA on separate dates. Thus, a complete and accurate citation in a future legal proceeding to one of these two definitions should also include the date upon which EPA approved the specific definition in question into Maine’s SIP in order to distinguish clearly one from the other. This result was necessary because Maine did not submit its entire revised Chapter 100 to EPA for approval into the SIP.

The new definition of “PM<sub>2.5</sub>” that we are approving through this document will be codified in the Maine SIP as Chapter 100.133. Chapter 100.133 will now be the correct citation for two different terms, as follows. Prior to our approval through this document of Maine’s definition of “PM<sub>2.5</sub>” Chapter

100.133 was the SIP citation for the term “Reconstruction or reconstructed.” After our approval through this document of Maine’s definition of “PM<sub>2.5</sub>” Chapter 100.133 will be the correct SIP citation for two separate terms and their definitions: (1) “PM<sub>2.5</sub>”; and (2) “Reconstruction or reconstructed.” EPA believes that implementation of the State’s permitting program and the enforceability of these terms as part of that program will not be compromised because the content of the two definitions clearly is different and will have been approved by EPA on separate dates. Thus, a complete and accurate citation in a future legal proceeding to one of these two definitions should also include the date upon which EPA approved the specific definition in question into Maine’s SIP in order to distinguish clearly one from the other. This result was necessary because Maine did not submit its entire revised Chapter 100 to EPA for approval into the SIP.

With respect to our approval of a paragraph (I) of the definition of “Regulated pollutant” (codified at Chapter 100.149 in the current Maine regulation), we recognize the definition of “Regulated pollutant” already exists in the SIP-approved version of Chapter 100 (codified at Chapter 100.137). The existing SIP-approved definition does not contain the required precursor language for PM<sub>2.5</sub> and ozone, and thus EPA will add paragraph (I) from the current Maine definition of “Regulated pollutant” to the SIP version of “Regulated pollutant” at Chapter 100.137. After our approval through this document of Maine’s definition of “Regulated pollutant,” Chapter 100.137(I) will be the correct SIP citation for two separate provisions within the same definition. EPA believes that implementation of the State’s permitting program and the enforceability of these terms as part of that program will not be compromised because the content of the two provisions clearly is different and will have been approved by EPA on separate dates. Thus, a complete and accurate citation in a future legal proceeding to one of these two provisions should also include the date upon which EPA approved the specific provision in question into Maine’s SIP in order to distinguish clearly one from the other. This result was necessary because Maine did not submit its entire revised Chapter 100 to EPA for approval into the SIP.

In this SIP action we are also approving an amendment to the State’s “Innovative control technology waiver” provision at Chapter

115(4)(A)(4)(f)(i)(d)(iii). We are also approving a new provision entitled “Growth Analysis” at Chapter 115(4)(A)(4)(h). We provide below, an explanation relating to the fact that Maine’s Chapter 115 has been restructured in terms of its codification scheme since EPA’s last SIP approval action on the chapter. Due to this restructuring, the way in which Maine references provisions in its February 14, 2013 submittal (consistent with the codification scheme contained in current state regulations) is different than how the Maine SIP is structured in terms of its codification scheme.

Chapter 115(4)(A)(4)(f)(i)(d)(iii) (the State’s current codification) expands on a list of existing conditions earlier approved by EPA into Maine’s SIP concerning prohibitions applicable to an innovative control technology waiver. The provision being approved in this document will be inserted in the Maine SIP by adding the new condition in its appropriate place within the existing regulation earlier approved into the SIP. This will be the case despite the fact that its codification does not align neatly with the codification scheme previously approved for the innovative control technology waiver. Specifically, Chapter 115(4)(A)(4)(f)(i)(d)(iii) will be placed between the Maine SIP’s provisions codified at Chapter 115(VI)(B)(1)(b)(iv)(b) and Chapter 115(VI)(B)(1)(b)(iv)(c). This result was necessary because Maine did not submit its entire revised Chapter 115 to EPA for approval into the SIP. EPA believes the difference in codification does not affect the enforceability of this provision and that, as a substantive legal requirement, the new provision meshes as it should with the existing substantive requirements.

In this SIP action we are also approving a revised provision entitled “Growth Analysis,” which is currently codified under state regulation as Chapter 115(4)(A)(4)(h). The provision concerns air quality impact information an applicant must supply to Maine DEP as part of a PSD permit application. This provision is an amendment to an existing provision previously approved into the Maine SIP and codified as Chapter 115(II)(B)(5). Maine DEP and EPA communicated on how best to codify the new provision entitled “Growth Analysis” at Chapter 115(4)(A)(4)(h). Maine DEP concurred with EPA’s assessment that the new provision replaces the older provision, which was previously approved into the Maine SIP. In this action, the new provision will supplant the older provision, and the Maine SIP will reflect the updated language by marking

Chapter 115(III)(B)(5) as “reserved” and adding the provision entitled “Growth Analysis” at Chapter 115(4)(A)(4)(h) immediately after Chapter 115(III)(B)(5) in the Maine SIP. This result is necessary because Maine did not submit its entire revised Chapter 115 to EPA for approval into the SIP. EPA believes the difference in codification does not affect the enforceability of this provision and that, as a substantive legal requirement, the new provision meshes as it should with the existing substantive requirements.

#### IV. Final Action

Pursuant to section 110 of the CAA, EPA is approving the provisions described above in this document as submitted in Maine’s February 14, 2013 submission to EPA. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions should relevant adverse comments be filed. This rule will be effective September 30, 2016 without further notice unless the Agency receives relevant adverse comments by August 31, 2016.

If the EPA receives such comments, then EPA will publish a document withdrawing this final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 30, 2016 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference state provisions as described above into the Maine SIP. EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or may be viewed at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

#### VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 5, 2016.

#### H. Curtis Spalding,

*Regional Administrator, EPA New England.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart U—Maine

- 2. Amend § 52.1020 in the table in paragraph (c) by revising the entries for “Chapter 100” and “Chapter 115” to read as follows:

##### § 52.1020 Identification of plan.

*	*	*	*	*
(c)	*	*	*	

## EPA-APPROVED MAINE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date EPA approval date and citation <sup>1</sup>	Explanations
Chapter 100	Definitions	May 22, 2016	August 1, 2016 [Insert <b>Federal Register</b> cita- tion].	
Chapter 115	Emission License Regulation	November 6, 2012.	August 1, 2016 [Insert <b>Federal Register</b> cita- tion].	

<sup>1</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

\* \* \* \* \*

[FR Doc. 2016-17830 Filed 7-29-16; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2016-0005; FRL-9949-94-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Measurement and Reporting of Condensable Particulate Matter Emissions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This SIP revision amends two regulations to clarify testing and sampling methods for stationary sources of particulate matter (PM) and adds the requirement to measure and report filterable and condensable PM. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on August 31, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2016-0005. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly

available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov) or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, (215) 814-2181, or by email at [pino.maria@epa.gov](mailto:pino.maria@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On April 8, 2016 (81 FR 20598), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. In the NPR, EPA proposed approval of amendments to chapters 121 and 139 of title 25, Environmental Protection, of the Pennsylvania Code (25 Pa. Code). The formal SIP revision was submitted by the Commonwealth of Pennsylvania on June 15, 2015.

##### II. Summary of SIP Revision

On June 25, 2015, the Commonwealth of Pennsylvania submitted a formal SIP revision that amends chapters 121 and 139 of 25 Pa. Code. Amendments to 25 Pa. Code section 121.1 in chapter 121 add definitions for the terms “condensable particulate matter” and “filterable particulate matter.” The amendments to 25 Pa. Code section 139.12 in chapter 139 add the requirement to measure and report filterable and condensable PM and explain the compliance demonstration process. The amendment to 25 Pa. Code section 139.53 specifies to whom monitoring reports must be submitted.

Other specific requirements of chapters 121 and 139 of 25 Pa. Code and the rationale for EPA’s proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

##### III. Final Action

EPA is approving the June 25, 2015 Pennsylvania SIP revision that amends specific provisions within chapters 121 and 139 of 25 Pa. Code. The amendments clarify testing and sampling methods and reporting requirements for stationary sources of PM and add the requirement to measure and report filterable and condensable PM.

##### IV. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revised Pennsylvania regulations, published in the Pennsylvania Bulletin, Vol. 44 No. 15, April 12, 2014, and effective on April 12, 2014. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or may be viewed at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

##### V. Statutory and Executive Order Reviews

###### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not

affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This rulemaking action, approving amendments to Pennsylvania’s regulations regarding testing and sampling methods for stationary sources of PM, including filterable and condensable PM, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 1, 2016.

**Shawn M. Garvin,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

#### **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart NN—Pennsylvania**

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by revising the entries “Section 121.1”, “Section 139.12”, and “Section 139.53” to read as follows:

#### **§ 52.2020 Identification of plan.**

*	*	*	*	*
(c)	*	*	*	*
(1)	*	*	*	*

State citation	Title/subject	State effective date	EPA Approval date	Additional explanation/ § 52.2063 citation
<b>Title 25—Environmental Protection Article III—Air Resources</b>				
<b>Chapter 121—General Provisions</b>				
Section 121.1	Definitions .....	04/12/2014	8/1/16 [Insert <b>Federal Register</b> citation].	Adds definitions for the terms “condensable particulate matter” and “filterable particulate matter.”
*	*	*	*	*
<b>Chapter 139—Sampling and Testing</b>				
<b>Subchapter A—Sampling and Testing Methods and Procedures</b>				
*	*	*	*	*
<b>Stationary Sources</b>				
*	*	*	*	*
Section 139.12.	Emissions of particulate matter.	04/12/2014	8/1/16 [Insert <b>Federal Register</b> citation].	Amends section 139.12.

State citation	Title/subject	State effective date	EPA Approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*
<b>Subchapter B—Monitoring Duties of Certain Sources</b>				
<b>General</b>				
Section 139.53.	Filing monitoring reports ...	04/12/2014	8/1/16 [Insert <b>Federal Register</b> citation].	Amends section 139.53.
*	*	*	*	*

\* \* \* \* \*

[FR Doc. 2016–18156 Filed 7–29–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2015–0788; FRL–9949–70–Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonable Further Progress Plan, Contingency Measures, Motor Vehicle Emissions Budgets for the Baltimore 1997 8-Hour Ozone Serious Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the serious nonattainment area reasonable further progress (RFP) plan for the Baltimore serious nonattainment area for the 1997 8-hour ozone national ambient air quality standard (NAAQS). The SIP revision includes 2011 and 2012 RFP milestones, contingency measures for failure to meet RFP, and updates to the 2002 base year inventory and the 2008 reasonable RFP plan previously approved by EPA. EPA is also approving the transportation conformity motor vehicle emissions budgets (MVEBs) associated with this revision. This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on August 31, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2015–0788. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business

information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov) or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, (215) 814–2181, or by email at [pino.maria@epa.gov](mailto:pino.maria@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On May 2, 2016 (81 FR 26188), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of the “Baltimore Serious Nonattainment Area 0.08 ppm 8-Hour Ozone State Implementation Plan Demonstrating Rate of Progress for 2008, 2011 and 2012 Revision to 2002 Base Year Emissions; and Serious Area Attainment Demonstration, SIP Number: 13–07,” (the Serious Area Plan) submitted by the Maryland Department of the Environment (MDE) on July 22, 2013. The SIP revision submittal included updates to the 2002 base year emissions inventory and 2008 RFP plan that EPA previously approved into the Maryland SIP, RFP for 2011 and 2012, an attainment demonstration, including modeling and weight of evidence, RFP and attainment contingency measures, a reasonably available control measures (RACM) determination, and 2012 MVEBs. After EPA determined Baltimore had attained the 1997 8-hour ozone standard, Maryland, by letter

dated October 20, 2015, withdrew the attainment demonstration, including modeling and weight of evidence, contingency measures for attainment, and the RACM analysis from consideration as a SIP revision. Therefore, those elements are not addressed in this rulemaking action.

##### II. Summary of SIP Revision

On June 4, 2010, EPA approved Maryland’s moderate area RFP that provided for a 15 percent (%) emissions reduction from 2002 to 2008, contained in the Moderate Area Plan. 75 FR 31709. Maryland, however, needed to update the 2008 target levels for its Serious Area Plan because they are the basis for the new 2011 and 2012 target level calculations for RFP. Maryland also needed to update its 2002 base year inventory, which is the basis for the 2008 target levels and its 15% RFP plan. In the Serious Area Plan, MDE updated its 2002 base year inventory and 15% RFP plan, including 2008 target levels, to reflect changes to EPA’s approved model for on-road mobile sector emissions, from the Mobile Source Emission Factor Model (MOBILE) to the Motor Vehicle Emission Simulator (MOVES) model, as well as updates to EPA’s NONROAD model.

Serious 8-hour ozone nonattainment areas are subject to RFP requirements in section 182(c)(2)(B) of the CAA that require an average of 3% per year of volatile organic compounds (VOC) and/or oxides of nitrogen (NO<sub>x</sub>) emissions reductions for all remaining 3-year periods after the first 6-year period out to the area’s attainment date (2008–2011 and 2011–2012). For a serious area, such as the Baltimore Area, with an approved 15% rate of progress (ROP) plan under the 1-hour standard, states can use reductions from VOC or NO<sub>x</sub> or a combination of either. The Serious Area Plan contains 2011 and 2012 RFP for the Baltimore Area, including the calculation of 2011 and 2012 target levels, 2011 and 2012 projected

inventories, and an accounting of the emission reductions from permanent and enforceable emission control measures achieved to meet RFP. The Serious Area Plan also includes contingency measures for failure to meet the 2012 RFP milestone. Finally, the Serious Area Plan includes 2012 MVEBs the Baltimore Area, set at 93.5 tons per day (tpd) NO<sub>x</sub> and 40.2 tpd VOC.

EPA reviewed the RFP plan for the Baltimore Area submitted in the Serious Area Plan, including updates to the 2008 RFP target levels previously SIP approved by EPA, the 2011 and 2012 RFP targets levels, control measures used to meet RFP, and contingency measures for failure to meet the 2012 RFP target, and found them to be approvable. In addition, EPA determined that MDE used acceptable techniques and methodologies to update the 2002 base year and 2008 projected inventories, and to develop the 2011 and 2012 milestone year projected inventories and found them approvable. Furthermore, EPA has found the Baltimore Area's 2012 MVEBs adequate for transportation conformity purposes and approvable. For details on EPA's analysis, see the Technical Support Documents (TSDs) for this rulemaking action, which are available online at <http://www.regulations.gov>, Docket number EPA-R03-OAR-2015-0788.

Other specific requirements of the Baltimore Area serious area RFP plan, inventories, RFP contingency measures, and MVEBs, and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

### III. Final Action

EPA is approving the updates to the 2002 base year inventory, updates to the 2008 RFP plan and associated 2008 projected emissions inventory, the 2011 and 2012 RFP plan and associated projected emission inventories, the contingency measures for failure to meet 2012 RFP, and the 2012 MVEBs for the Baltimore Area submitted in MDE's July 22, 2013 Serious Area Plan. The other parts of the Serious Area Plan were withdrawn by Maryland.

### IV. Statutory and Executive Order Reviews

#### A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not

impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action: Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, pertaining to the Baltimore Area serious RFP plan, inventories, RFP contingency measures, and MVEBs, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: July 15, 2016.

**Shawn M. Garvin,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND  
PROMULGATION OF  
IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart V—Maryland**

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entries “Serious Area Reasonable Further Progress (RFP) Plan and 2012 RFP Contingency Measures,” “Updates to the 2002 Base Year Inventory for VOC, NO<sub>x</sub> and CO,” and “2012

Transportation Conformity Budgets” at the end of the table to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* * *	* * *	* * *
Serious Area Reasonable Further Progress (RFP) Plan and 2012 RFP Contingency Measures.	Baltimore 1997 8-hour ozone serious nonattainment area.	July 22, 2013 ....	8/1/2016 [Insert <b>ister</b> citation].	<b>Federal Reg-</b> § 52.1076(cc)
Updates to the 2002 Base Year Inventory for VOC, NO <sub>x</sub> and CO.	Baltimore 1997 8-hour ozone serious nonattainment area.	July 22, 2013 ....	8/1/2016 [Insert <b>ister</b> citation].	<b>Federal Reg-</b> § 52.1075(p)
2012 Transportation Conformity Budgets.	Baltimore 1997 8-hour ozone serious nonattainment area.	July 22, 2013 ....	8/1/2016 [Insert <b>ister</b> citation].	<b>Federal Reg-</b> § 52.1076(dd)

■ 3. Section 52.1075 is amended by adding paragraph (p) to read as follows:

**§ 52.1075 Base year emissions inventory.**

\* \* \* \* \*

(p) EPA approves, as a revision to the Maryland State Implementation Plan, updates to the 2002 base year emissions inventories previously approved under paragraph (i) of this section for the Baltimore 1997 8-hour ozone serious nonattainment area (Area) submitted by the Secretary of the Maryland Department of the Environment on July 22, 2013. This submittal consists of updated 2002 base year point, area, non-road mobile, and on-road mobile source

inventories in the Area for the following pollutants: Volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxides (NO<sub>x</sub>).

■ 4. Section 52.1076 is amended by adding paragraphs (cc) and (dd) to read as follows:

**§ 52.1076 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.**

\* \* \* \* \*

(cc) EPA approves revisions to the Maryland State Implementation Plan consisting of the serious area reasonable further progress (RFP) plan for the Baltimore 1997 8-hour ozone serious nonattainment area, including 2011 and

2012 RFP milestones, updates to the 2008 RFP milestones previously approved by EPA under paragraph (q) of this section, and contingency measures for failure to meet 2012 RFP, submitted by the Secretary of the Maryland Department of the Environment on July 22, 2013.

(dd) EPA approves the following 2012 RFP motor vehicle emissions budgets (MVEBs) for the Baltimore 1997 8-hour ozone serious nonattainment area, in tons per day (tpd) of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>), submitted by the Secretary of the Maryland Department of the Environment on July 22, 2013:

**TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE BALTIMORE AREA**

Type of control strategy SIP	Year	VOC (tpd)	NO <sub>x</sub> (tpd)	Effective date of adequacy determination or SIP approval
Rate of Progress Plan .....	2012	40.2	93.5	March 8, 2016 (81 FR 8711), published February 22, 2016.

[FR Doc. 2016-17781 Filed 7-29-16; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2016-0119; FRL-9948-26-Region 9]

**Approval of California Air Plan  
Revisions, Modoc County Air Pollution  
Control District, Permit Programs**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Modoc County Air Pollution Control District (MCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern MCAPCD's administrative and procedural requirements to obtain preconstruction permits that regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are approving local rules under the CAA.

**DATES:** This rule is effective on September 30, 2016 without further notice, unless the EPA receives adverse comments by August 31, 2016. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2016-0119 at <http://www.regulations.gov>, or via email to [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments



cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For

additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Ya-Ting (Sheila) Tsai, EPA Region IX, (415) 972-3328, [Tsai.Ya-Ting@epa.gov](mailto:Tsai.Ya-Ting@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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## I. The State’s Submittal

### A. What rules did the State submit?

Table 1 lists the rules under MCAPCD Regulation II, “Permit System” addressed by this action with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Rule No.	Rule title	Adoption or amendment date	Submittal date
2.3 .....	Transfers .....	1/15/1989	12/31/1990
2.5 .....	Expiration of Applications .....	1/15/1989	12/31/1990
2.7 .....	Conditional Approval .....	1/15/1989	12/31/1990
2.10 .....	Further Information .....	1/15/1989	12/31/1990

On February 28, 1991, the EPA determined that the submittal for the MCAPCD rules listed in Table 1 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

### B. Are there other versions of these rules?

EPA approved the rules listed in Table 2 into the MCAPCD portion of the California SIP on the dates listed. When

the rules listed in Table 1 are approved by EPA, those rules will take the place of the existing SIP approved rules listed in Table 2.

TABLE 2—SIP APPROVED RULES

Rule No.	Rule title	SIP approval date	Federal Register citation
2.3 .....	Transfer .....	09/22/1972	37 FR 19812
2.5 .....	Cancellation of Applications .....	09/22/1972	37 FR 19812
2.7* .....	Provision of Sampling and Testing Facilities .....	09/22/1972	37 FR 19812
2.9* .....	Conditional Approval .....	09/22/1972	37 FR 19812

\* **Note:** SIP approved Rule 2.7—Provision of Sampling and Testing Facilities will be replaced by newly submitted Rule 2.10 Further Information. SIP approved Rule 2.9—Conditional Approval will be replaced by submitted Rule 2.7—Conditional Approval.

### C. What is the purpose of the submitted rule revisions?

Section 110(a) of the CAA requires States to submit regulations that will assure attainment and maintenance of the National Ambient Quality Air Quality Standards (NAAQS). These rules were developed as part of the local agency’s general programmatic requirement to implement the requirement commonly referred to as the minor or general New Source Review (NSR) program. The revisions contained in the submitted rules listed in Table 1 are mostly administrative in nature. Rule 2.3 prohibits the transfer of an Authority to Construct or Permit to

Operate without written approval. Rule 2.5 provides the timeline for an Authority to Construct or an application for a Permit to Operate to expire and/or be extended. Rule 2.7 is renumbered from Rule 2.9 and provides additional enforceability by clarifying that equipment cannot be operated contrary to permit conditions specified in the permit. Rule 2.10 is a new rule that allows MCAPCD to require data, sampling, testing, and monitoring to determine a stationary source’s emissions. There are no substantive relaxations to these rules.

The TSD, which is available in the docket for today’s rulemaking, has more information about these rules.

## II. The EPA’s Evaluation and Action

### A. How is the EPA evaluating the rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). The submitted rules are revisions

to existing SIP approved general NSR permit program requirements under 40 CFR 51.160–51.164. The revisions are primarily administrative in nature (reformatting, providing additional clarity and enforceability).

*B. Do the rules meet the evaluation criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. These changes are mostly administrative in nature and their approval will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA application requirement.

The TSD, which is available in the docket for today's rulemaking, has more information on our evaluation.

*C. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, the EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 31, 2016, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 30, 2016. This action will incorporate these rules into the federally enforceable SIP.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MCAPCD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy

at U.S. Environmental Protection Agency Region IX (AIR–3), 75 Hawthorne Street, San Francisco, CA 94105–3901.

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land

or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 15, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(6)(xi)(D), and (c)(182)(i)(F)(5), (6), (7), and (8) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \*

(xi) \* \* \*

(D) Previously approved September 22, 1972 in paragraph (c)(6) of this section and now deleted with replacement in paragraph (c)(182)(i)(F)(5), (6), (7), and (8), Rule 2.3 “Transfer,” Rule 2.5 “Cancellation of Application,” Rule 2.7 “Provision of Sampling and Testing Facilities,” and Rule 2.9 “Conditional Approval”.

\* \* \* \* \*

(182) \* \* \*

(i) \* \* \*

(F) \* \* \*

(5) Regulation II, “Permit System,” Rule 2.3 “Transfers” amended on January 15, 1989.

(6) Regulation II, “Permit System,” Rule 2.5 “Expiration of Applications” amended on January 15, 1989.

(7) Regulation II, “Permit System,” Rule 2.7 “Conditional Approval” amended on January 15, 1989.

(8) Regulation II, “Permit System,” Rule 2.10 “Further Information” amended on January 15, 1989.

\* \* \* \* \*

[FR Doc. 2016–18009 Filed 7–29–16; 8:45 am]

BILLING CODE 6560–50–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1816 and 1852

RIN 2700–AE31

### NASA Federal Acquisition Regulation Supplement: Clarification of Award Fee Evaluations and Payments (NFS Case 2016–N008)

AGENCY: National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA is issuing a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to clarify NASA’s award fee process by incorporating terms used in award fee contracting; guidance relative to final award fee evaluations; release of source selection information; and the calculation of the provisional award fee payment percentage in NASA end-item award fee contracts.

**DATES:** *Effective:* August 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Roets, telephone 202–358–4483.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

NASA published a proposed rule in the **Federal Register** at 81 FR 23667 on April 22, 2016, to revise NFS 1816.4 and 1852.216–77 to clarify NASA’s award fee evaluation and payment processes. One public comment was received in response to the proposed rule.

##### II. Discussion and Analysis

NASA reviewed the public comment in the development of the final rule. A discussion of the comment and the changes made to the rule as a result of this comment is provided, as follows:

###### A. Changes

No change was made in the final rule in response to the public comment received.

###### B. Analysis of Public Comment

*Comment:* Respondent stated that they do not support this rule.

*Response:* The respondent did not identify any specific areas of concern. Accordingly, this rule provides needed clarification to NASA’s award fee processes to enhance the efficient administration of award fee incentives.

##### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This

rule is not a major rule under 5 U.S.C. 804.

#### IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

NASA is amending the NFS to clarify award fee process by incorporating terms used in award fee contracting; guidance relative to final award fee evaluations; release of source selection information; and the calculation of the provisional award fee payment percentage in NASA end-item award fee contracts.

No changes were made to the proposed rule in developing the final rule. No comments from small entities were submitted in reference to the Regulatory Flexibility Act request in the proposed rule. Therefore, the proposed rule has been adopted as final.

NASA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the guidance largely clarifies aspects relative to the award fee evaluation and payment process resulting in a more consistent use and administration of award fees within NASA providing all entities both large and small a positive benefit. An analysis of data in the Federal Procurement Data System (FPDS) revealed that award fee contracts are primarily awarded to large businesses with large dollar contracts. An analysis of FPDS data over the past three years (FY2013 through FY2015) showed an average of 157 award fee contracts were awarded at NASA per year, of which 33 (approximately 20%) were awarded to small businesses. Thus, the application of the award fee revisions contained in this rule do not apply to a substantial number of small entities.

The rule imposes no reporting, recordkeeping, or other information collection requirements. There are no significant alternatives that could further minimize the already minimal impact on businesses, small or large.

#### V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subjects in 48 CFR Parts 1816 and 1852

Government procurement.

**Manuel Quinones,**

*NASA FAR Supplement Manager.*

Accordingly, 48 CFR parts 1816 and 1852 are amended as follows:

- 1. The authority citation for parts 1816 and 1852 continues to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

## PART 1816—TYPES OF CONTRACTS

- 2. Add section 1816.001 to read as follows:

### 1816.001 Definitions.

As used in this part—

*Earned award fee* means the payment of the full amount of an award fee evaluation period's score/rating.

*Unearned award fee* means the difference between the available award fee pool amount for a given award fee evaluation period less the contractor's earned award fee amount for that same evaluation period.

### 1816.307 [Amended]

- 3. Amend section 1816.307 by removing paragraph (g)(1).  
 ■ 4. Amend section 1816.307–70 by revising paragraph (f) to read as follows:

### 1816.307–70 NASA contract clauses.

\* \* \* \* \*

(f) When FAR clause 52.216–7, Allowable Cost and Payment, is included in the contract, as prescribed at FAR 16.307(a), the contracting officer should include the clause at 1852.216–89, Assignment and Release Forms.

\* \* \* \* \*

- 5. Amend section 1816.405–273 by revising paragraphs (b) and (c) to read as follows:

### 1816.405–273 Award fee evaluations.

\* \* \* \* \*

(b) *End item contracts.* On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government's assessment of the quality of its

performance, and establish the basis for making interim award fee payments (see 1816.405–276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. However, if the final award fee adjectival rating is higher or lower than the average adjectival rating of all the interim award fee periods, or if the final award fee score is eight base percentage points higher or lower than the average award fee score of all interim award fee periods (e.g. 80% to 88%), then the Head of the Contracting Activity (HCA) or the Deputy Chief Acquisition Officer (if the HCA is the Fee Determination Official) shall review and concur in the final award fee determination. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as "Source Selection Information—see FAR 3.104". See FAR 42.1503(h) regarding the requirements for releasing Source Selection Information included in the Contractor Performance Assessment Reporting System (CPARS).

- 6. Amend section 1816.405–276 by revising the last sentence of paragraph (b) to read as follows:

### 1816.405–276 Award fee payments and limitations.

\* \* \* \* \*

(b) \* \* \* For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score, except for the first evaluation period which is limited to 80 percent of the available award fee for that evaluation period.

\* \* \* \* \*

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 7. Amend section 1852.216–77 by revising the date of the clause and paragraph (c)(3) to read as follows:

### 1852.216–77 Award fee for end item contracts.

\* \* \* \* \*

## Award Fee for End Item Contracts (Aug 2016)

\* \* \* \* \*

(c) \* \* \*

(3) Provisional award fee payments will [insert "not" if applicable] be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score [see [insert applicable cite]], except for the first evaluation period which is limited to [insert a percent not to exceed 80 percent] of the available award fee for that evaluation period. Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is "poor/unsatisfactory," the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance).

\* \* \* \* \*

- 8. Amend section 1852.216–89 by revising the date of the clause and the introductory text of the clause to read as follows:

### 1852.216–89 Assignment and release forms.

\* \* \* \* \*

## Assignment and Release Forms (Aug 2016)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216–7, Allowable Cost and Payment:

\* \* \* \* \*

[FR Doc. 2016–17844 Filed 7–29–16; 8:45 am]

BILLING CODE 7510–13–P

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****49 CFR Part 665**

[Docket No. FTA–2015–0019]

RIN 2132–AB11

**Bus Testing: Establishment of Performance Standards, a Bus Model Scoring System, a Pass/Fail Standard and Other Program Updates****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Final rule.

**SUMMARY:** The Federal Transit Administration (FTA) is issuing a new pass/fail standard and new aggregated scoring system for buses and modified vans (hereafter referred to as “bus” or “buses”) that are subject to FTA’s bus testing program, as mandated by Section 20014 of the Moving Ahead for Progress in the 21st Century Act (MAP–21). The pass/fail standard and scoring system address the following categories as required by MAP–21: Structural integrity, safety, maintainability, reliability, fuel economy, emissions, noise, and performance. Recipients of FTA grants are prohibited from using FTA financial assistance to procure new buses that have not met the minimum performance standards established by today’s final rule. Finally, FTA is requiring bus manufacturers to provide country-of-origin information for test unit bus components, in lieu of applying Buy America U.S. content requirements to all buses submitted for testing.

**DATES:** The effective date of this rule is October 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** For technical information, Michael Baltes, Director, Office of Infrastructure and Asset Innovation, Office of Research, Demonstration and Innovation (TRI), (202) 366–2182, [michael.baltes@dot.gov](mailto:michael.baltes@dot.gov). For legal information, Richard Wong, Office of the Chief Counsel (TCC), (202) 366–4011, [richard.wong@dot.gov](mailto:richard.wong@dot.gov).

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- A. Executive Summary
- B. Rulemaking Background
- C. Summary of Comments and Section-by-Section Analysis
- D. Regulatory Analyses and Notices

**A. Executive Summary***Purpose*

The purpose of this final rule is to implement minimum performance standards, a scoring system, and a pass/

fail threshold for new model transit buses procured with FTA financial assistance authorized under 49 U.S.C. Chapter 53. Consistent with 49 U.S.C. 5318(e), FTA recipients are prohibited from using FTA financial assistance to procure new buses that have not met the minimum performance standards established by this rule. The standards and scoring system address the following categories: Structural integrity, safety, maintainability, reliability, fuel economy, emissions, noise, and performance. Buses must meet a minimum performance standard in each of these categories in order to receive an overall passing score and be eligible for purchase using FTA financial assistance. Buses can achieve higher scores with higher performance in each category, and today’s rule establishes a numerical scoring system based on a 100-point scale so that buyers can more effectively compare vehicles.

To minimize disruption to transit vehicle manufacturers, consistent with the proposal, today’s rule adopts many of the existing testing procedures and standards used under the current bus testing program. The rule, however, imposes some changes including: (1) New inspections at bus check-in to verify the bus configuration is within its weight capacity rating at its rated passenger load and an inspection to determine if the major components of the test bus match those identified in the Buy America pre-audit report; (2) elimination of the on-road fuel economy testing and substituting the fuel economy results obtained during the emissions test; and (3) revision to the payloading procedure to recognize the manufacturer’s “standee” passenger rating. The final rule does not add any new tests to the existing bus testing program—in fact, FTA is eliminating two tests, the on-road fuel economy test, as equivalent data could be derived from the more accurate dynamometer testing, and the shakedown test, which is considered redundant to the structural durability test and no bus models have historically failed this test.

Because FTA provides financial assistance to State and local agencies operating public transportation systems, covering up to eighty-five percent (85%) of a vehicle’s capital cost, while the State or local government provides at least fifteen percent (15%) matching share, there is a strong incentive by FTA and local agencies to ensure that those funds are used effectively and efficiently. As part of its stewardship of those funds, Congress directed FTA in 1987 to establish a bus testing program whereby new model buses would first

be tested to ensure their ability to withstand the rigors of regular transit service before FTA funds would be spent on those vehicles. In the following years, FTA accumulated comprehensive test data on the scores of buses that had undergone testing, but the program did not assign a comparative ranking to the vehicles. Further, because the program was intended to provide information on a vehicle’s performance and Congress did not authorize FTA to use the test data to disqualify a vehicle from participating in FTA-assisted procurements, FTA did not establish a pass/fail performance baseline. Since that time, several tested buses did not meet their expected service lives at the cost of millions of dollars to transit agencies and significant inconvenience to transit riders. In MAP–21, Congress directed FTA to establish a new pass/fail standard for tested buses, including a weighted scoring system that would assist transit bus buyers in selecting an appropriate vehicle. FTA issued the Notice of Proposed Rulemaking (NPRM) for this action on June 23, 2015. Today’s final rule establishes a new scoring system and a pass/fail standard for buses tested under FTA’s existing bus testing program, as well as making other administrative changes.

*Legal Authority*

Although Section 20014 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 121–141) retained the existing bus testing categories of maintainability, reliability, safety, performance, structural integrity, fuel economy, emissions, and noise in the existing 49 U.S.C. 5318(a), Section 20014 also expanded 49 U.S.C. 5318(e) by adding three new requirements on the use of Chapter 53 funding to acquire new bus models. The first is that new bus models must meet performance standards for maintainability, reliability, performance (including braking performance), structural integrity, fuel economy, emissions, and noise. The second is that new bus models acquired with Chapter 53 funds must meet the minimum safety performance standards established pursuant to section 5329(b). The third is that the new bus model must satisfy an overall pass/fail standard based on the weighted aggregate score derived from each of the existing test categories (maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise).

Today’s rule does not address the minimum safety performance standards for public transportation vehicles required under 49 U.S.C.

5318(e)(1)(B)(ii). FTA proposed a National Public Transportation Safety Plan (81 FR 6372, February 5, 2016), pursuant to 49 U.S.C. 5329(b), which stated that the minimum safety performance standards may eventually be the subject of rulemaking, proposed voluntary vehicle performance standards in the interim, and sought comment on four questions posed in the proposed Plan.

#### Summary of Key Provisions

Today's rule is taking the following actions, the first of which is required by MAP-21 as part of the new "pass/fail" requirement, and the remainder of which are discretionary actions to strengthen the program:

- Establish testing procedures and establish minimum performance standards, which are generally based upon the pre-MAP-21 tests, and a pass/fail scoring system for new bus models, with a minimum passing score of 60 points. A bus model could receive up to an additional 40 points based on its performance above the proposed minimum performance standard in particular test categories. Buses would need to achieve at least a minimum score in each category in order to pass the overall test and be eligible for procurement using FTA financial assistances.

- Establish check-in procedures, including FTA approval, for new bus models proposed for testing.

- Require transit vehicle manufacturers to submit Disadvantaged Business Enterprise (DBE) goals to FTA prior to scheduling a test.

- Determine a new bus model's total passenger load based on the manufacturer's maximum passenger rating, including accommodations for standees.

- Establish a simulated passenger weight of 150 lbs. for seated and standing (standee) passengers, and a weight of 600 lbs. for passengers who use wheelchairs.

- Require test model buses to identify the country-of-origin for the components of the test vehicle to facilitate a transit agency's ability to compare it with the actual production model.

- The replacement of the on-road fuel economy test with the fuel economy testing already conducted during the emissions test on the chassis dynamometer.

Generally, FTA is adopting the test procedures that were proposed in the NPRM, although FTA is making a small number of changes to some test procedures as a result of comments received in response to the NPRM. FTA is adding a set of brake stops at gross passenger load as part of the Braking Test; measuring noise levels while traversing road irregularities as part of the Noise Test; and eliminating the Shakedown Test and moving its single point score value into the Structural Durability Test. Further, FTA is not adopting the proposal that the test unit bus must be Buy America-compliant. Instead, FTA only is requiring that the manufacturer provide the country of origin for the test vehicle's major components, which FTA believes will help transit agencies ensure that the tested bus is similar to the bus that will be completed in production. In addition, FTA is making a few non-substantive amendments, replacing the term "grantee" with "recipient" to bring it into conformity with standard FTA usage, and cross-referencing FTA Circular 5010's categorization of a vehicle's useful service life instead of repeating it in the regulatory text.

The NPRM sought comment on establishing testing procedures, performance standards, and a scoring system for remanufactured vehicles sold by third-party vendors and procured using FTA financial assistance. Based on the comments received, FTA has concluded that further consideration is warranted, and therefore, is not

extending the bus testing requirement to remanufactured buses through today's final rule. Given the growing investment in Federal and local dollars in remanufactured buses, however, and the emphasis on public transit safety in MAP-21, FTA believes that it is responsible Federal stewardship to ensure that remanufactured buses meet expectations for reliability and durability and will address remanufactured buses in a subsequent rulemaking action.

#### Summary of Benefits and Costs

Table 1 below summarizes the potential benefits and costs of this rule that FTA was able to quantify over 10 years and using a 3 and 7 percent discount rate. Quantified costs stem from shipping buses to the testing facility, manufacturer testing fees, having repair personnel for bus manufacturers available at the testing site, new paperwork requirements, and increases to the resources needed to operate the bus testing program (which represents most of the quantified costs). Unquantified costs include remedial actions to buses that do not pass the proposed test (which may extend to all the buses in a model represented by the tested bus) and potential improvements to buses to obtain a higher testing score. However, given that 41 of 49 buses tested between January 2010 and February 2013 would have satisfied the proposed performance standards without any design changes, FTA believes that the proposed requirements would not drive systemic changes to all transit bus models. Quantified benefits are from a reduction in unscheduled maintenance costs. The total annual program cost impact of this rule is estimated to be \$159,369. The total annual program benefit is estimated to be \$531,990. The resulting cost and benefits are presented in Table 1.

TABLE 1—SUMMARY OF QUANTIFIED COSTS AND BENEFITS

Year	Costs	Benefits	Net cash flow	Discounted net benefits @	
				3%	7%
1 .....	\$159,369	\$531,990	\$372,621	\$361,768	\$348,244
2 .....	159,369	531,990	372,621	351,231	325,462
3 .....	159,369	531,990	372,621	341,001	304,170
4 .....	159,369	531,990	372,621	331,069	284,271
5 .....	159,369	531,990	372,621	321,426	265,674
6 .....	159,369	531,990	372,621	312,064	248,293
7 .....	159,369	531,990	372,621	302,975	232,050
8 .....	159,369	531,990	372,621	294,150	216,869
9 .....	159,369	531,990	372,621	285,583	202,681
10 .....	159,369	531,990	372,621	277,265	189,422

TABLE 1—SUMMARY OF QUANTIFIED COSTS AND BENEFITS—Continued

Year	Costs	Benefits	Net cash flow	Discounted net benefits @	
				3%	7%
Net Present Value .....	.....	.....	.....	3,178,533	2,617,134

## B. Background

FTA's grant programs, including those at 49 U.S.C. 5307, 5310, 5311 and 5339, assist transit agencies with procuring buses. The Federal transit program allows FTA to provide up to 85% funding for each bus. In 2013, for example, FTA funds assisted in the procurement of 8,934 new vehicles, of which approximately 5,600 buses and modified vans were covered under the existing testing program. The testing program has its origins in Section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA, Pub. L. 100–17), which provided that no funds appropriated or made available under the Urban Mass Transportation Act of 1964, as amended, were to be obligated or expended for the acquisition of a new model bus after September 30, 1989, unless a bus of such model had been tested to ensure that the vehicle “will be able to withstand the rigors of transit service” (H. Rept. 100–27, p. 230). In subsection 317(b), Congress mandated seven specific test categories—maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise—augmenting those tests with the addition of braking performance and emissions testing through section 6021 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240). These requirements were subsequently codified at 49 U.S.C. 5318.

FTA issued its initial NPRM in May 1989 (54 FR 22716, May 25, 1989) and an interim Final Rule three months later (54 FR 35158, August 23, 1989), establishing a bus testing program that submitted vehicles to seven statutorily-mandated tests resulting in a test report and requiring transit bus manufacturers to submit that completed test report to transit agencies before FTA funds could be expended to purchase those vehicles. Although Congress did not authorize FTA to withhold financial assistance for a vehicle based on the data contained in a test report, FTA expected that the test report would provide accurate and reliable bus performance information to transit authorities that could be used in their purchasing and operational decisions.

This system remained in place for over twenty years. During the intervening period, however, a handful of bus models that had documented problems in their test reports were able to enter transit service, most notably, a fleet of 226 articulated buses that one of the Nation's largest transit agencies ordered in 2001. After paying \$87.7M of the \$102.1M contract, the transit agency stopped payments in 2005 due to unresolved problems concerning the suspension systems and structural cracks around the articulation joint, near the axles, and in the rear door header, triggering years of litigation. In addition, in 2009, the transit agency abruptly pulled all of these models from service for safety concerns following a structural failure related to the articulation joint, resulting in lengthier and more crowded commutes for thousands of transit riders. In May 2012, a local court ruled that the transit agency could sell the buses for scrap metal, a move that generated only \$1.2M for vehicles that had served barely half of their FTA-funded service lives.

In 2012, MAP–21 amended 49 U.S.C. 5318 by adding new requirements to subsection 5318(e), *Acquiring New Bus Models*. Importantly, it shifted the program to one where recipients could only use FTA funding to procure buses that passed FTA's testing program, which now included a bus model scoring system and a pass/fail standard based on the weighted aggregate score for each of the existing performance standards (maintainability, reliability, performance (including braking performance), structural integrity, fuel economy, emissions, and noise).

MAP–21 also amended section 5318(e) to require that new bus models meet the minimum safety performance standards to be established by the Secretary of Transportation pursuant to 49 U.S.C. 5329(b). In the recently-proposed National Public Transportation Safety Plan (81 FR 6372, February 5, 2016), FTA proposed to establish voluntary vehicle performance standards as an interim measure, acknowledging that minimum safety performance standards eventually may be the subject of rulemaking, and sought comment on four questions posed in the proposed Plan.

The primary purpose of today's rule is to establish minimum performance standards, a new bus model scoring system, and a pass/fail standard. In developing the proposals contained in the NPRM, FTA engaged in extensive discussions with transit industry stakeholders through the use of public webinars, teleconferences, and presentations at industry conferences. Participants in these public outreach efforts included transit vehicle manufacturers, component suppliers, public transit agencies, State departments of transportation, and Bus Testing Facility personnel, and their contributions were reflected in the aggregate scoring system and pass/fail criteria contained in the NPRM.

In addition to implementing the statutory mandates, FTA proposed other administrative changes that would adjust the passenger payloading process to better reflect industry practice and ensure that buses tested at the facility comply with FTA Civil Rights and Buy America requirements regarding disadvantaged business enterprises and domestic content, respectively.

Finally, FTA sought comment on establishing a bus testing requirement and scoring system for remanufactured buses sold by third parties and procured using FTA funds.

## C. Summary of Comments and Section-by-Section Analysis

FTA received a total of 22 comments in response to the NPRM, including comments from transit bus manufacturers, remanufacturers of transit buses, national and state transit associations, and transit agencies procuring transit buses. FTA also received several comments from fire safety advocates and component manufacturers, who urged FTA to adopt fire safety standards for materials used in bus interiors, including bus seats, which exceed Federal Motor Vehicle Safety Standard (FMVSS) 302. As noted above, although Congress directed FTA to establish minimum safety performance standards for vehicles used in public transportation in 49 U.S.C. 5329(b), FTA has not yet initiated such a rulemaking and those comments, however well-intentioned, are beyond the scope of today's regulatory action.



Although today's final rule contains much of what was proposed in the NPRM, FTA is making some changes to the test procedures as a result of comments received in response to the NPRM. FTA is adding a set of brake stops at gross passenger load as part of the Braking Test; measuring noise levels while traversing road irregularities as part of the Noise Test; and eliminating the Shakedown Test and moving its single point score value into the Structural Durability Test. Further, FTA is removing the proposal that the test unit bus be Buy America-compliant, and instead, is only requiring the manufacturer to provide the country of origin for the test vehicle's major components, which FTA believes will help transit agencies ensure that the tested bus is similar to the bus that will be produced and delivered. In addition, FTA is making a few non-substantive technical amendments, replacing the term "grantee" with "recipient" to bring it into conformity with standard FTA usage, and cross-referencing FTA Circular 5010's categorization of a vehicle's useful service life instead of repeating it in the regulatory text.

#### Section 665.1 Purpose

FTA proposed to amend the purpose of the regulation to reflect a new pass/fail test and scoring system.

*Comments Received:* FTA did not receive any comments on this section.

*Agency Response:* FTA is including this section in the final rule without change.

#### Section 665.3 Scope

FTA proposed no changes, as the requirements of this part continue to apply to recipients of Federal financial assistance under 49 U.S.C. Chapter 53.

*Comments Received:* FTA did not receive any comments on this section.

*Agency Response:* FTA is including this section in the final rule without change.

#### Section 665.5 Definitions

FTA proposed changing the definition of *Curb Weight* from "Curb weight means the weight of the empty, ready-to-operate bus plus driver and fuel." to "*Curb weight* means the weight of the bus including maximum fuel, oil, and coolant; but without passengers or driver."

FTA proposed changing the definition of *Gross Weight* from "Gross weight, also gross vehicle weight, means the curb weight of the bus plus passengers simulated by adding 150 pounds of ballast to each seating position and 150 pounds for each standing position (assumed to be each 1.5 square feet of

free floor space)." to "the seated load weight of the bus plus 150 pounds of ballast for each rated standee passenger, up to and including, the maximum rated standee passenger capacity identified on the bus interior bulkhead".

FTA proposed changing the definition of *Seated Load Weight* from "Seated load weight means the weight of the bus plus driver, fuel, and seated passengers simulated by adding 150 pounds of ballast to each seating position." to "the curb weight of the bus plus seated passengers simulated by adding 150 pounds of ballast to each seating position and 600 pounds per wheelchair position." This 600 pound figure is based on the minimum load-bearing capacity for wheelchair lifts and ramps in the USDOT's accessible bus specifications at 49 CFR 38.23(b)(1) and (c)(1).

*Comments Received:* FTA received two comments on this section. One commenter suggested that buses be tested at their maximum Gross Vehicle Weight Rating (GVWR) and Gross Axle Weight Rating (GAWR), and that loading a bus based on the number of seated and standing passengers (using a simulated weight of 150 pounds for each passenger and 600 pounds for each wheelchair location) would not accurately reflect a fully loaded bus or actual operating conditions. The other commenter sought clarification about the simulated passenger payload of 150 pounds per person, believing that FTA had raised it to 175 pounds in a previous regulatory action.

*Agency Response:* FTA does not support testing a bus at its maximum GVWR or GAWR for several reasons. First, unlike trucks that transport cargo and axle loads that must be monitored, buses transport people and are loaded based on the number of available seat/wheelchair positions and the amount of open floor space where standees are allowed by the bus operator, regardless of the vehicle's weight ratings. Second, in actual transit use, the capacity of a transit bus is not based on the vehicle's GVWR or GAWR limit, but rather, on the vehicle's actual passenger capacity. FTA will allow bus manufacturers to request that the bus be loaded up to its maximum weight rating when the resulting gross vehicle weight at the manufacturer's rated passenger load is less than the GVWR to allow the manufacturer the flexibility to adjust the seating layouts up to the full weight capacity of the bus model. If a bus's advertised passenger capacity is well below its weight ratings, a manufacturer may not increase the length of the vehicle to accommodate additional passengers because an increase in the

length of a tested bus model is considered a major change in configuration and could result in additional testing.

With regard to the commenter who sought clarification on the simulated passenger weight, FTA had proposed raising the weight from 150 pounds to 175 pounds in a 2011 **Federal Register** Notice (76 FR 13580, March 14, 2011), but that proposal was subsequently withdrawn (77 FR 76597, December 14, 2012).

Therefore, FTA is adopting this section in the final rule without change.

#### Remanufactured Buses

FTA also posed a series of questions seeking comment on whether remanufactured buses (*i.e.*, previously owned buses that have undergone substantial structural, mechanical, electrical, and/or cosmetic rebuilding and are sold to a transit agency other than the vehicle's original owner) should be subject to the bus testing requirement. As FTA explained in the NPRM, FTA had not previously extended the testing requirements to these types of buses because, until recently, transit agencies were only rebuilding their existing buses as part of their fleet maintenance. However, FTA is aware that remanufactured buses are now being offered by third-parties to transit agencies as a less expensive alternative to acquiring new buses. FTA therefore is concerned that these models could be introduced as *de facto* new buses or purchased in lieu of new buses, without having to go through the same testing requirements as a new bus model. However, because FTA had various questions about how to apply the bus testing program to this category of vehicles, FTA sought comment through the NPRM.

One manufacturer of new transit buses, one transit agency, one trade association, and two bus remanufacturers submitted comments, all of whom agreed that remanufactured buses need to meet safety and durability requirements, but disagreeing on the preferred method. The manufacturer of new buses supported the standardized testing of remanufactured buses, believing that "remanufactured buses should undergo the same rigorous testing that new buses and coaches must meet in order to ensure their safety and reliability," recommending that the final rule include provisions that ensure that the original bus manufacturer is not referenced in a test report to limit confusion and to prevent a company from selling remanufactured vehicles using the original bus manufacturer's name for marketing purposes. In

contrast, the remanufacturers said their vehicles already undergo extensive testing and analysis before, during, and after the remanufacturing process to ensure the vehicles' safety and durability, and that additional testing at Altoona would be ineffective and redundant.

FTA is also aware that procuring remanufactured buses is being advertised in trade magazines and at trade shows as a less expensive alternative to procuring a newly built bus, and submitting both new and remanufactured vehicles to the same testing program could place both on an equal footing and ensure the safety and reliability of each. Furthermore, the national trade association's comments noted some issues within the trucking industry related to remanufactured equipment that could compromise safety and reliability of vehicles. Given Congressional direction in MAP-21 to augment FTA's safety responsibilities and to strengthen the bus testing program through today's regulatory changes, FTA believes the subject of remanufactured buses should undergo further review and consideration and will address the subject in a later rulemaking.

#### *Section 665.7 Certification of Compliance*

FTA proposed to amend this section to reflect that the recipient must certify that a bus has received a passing test score, but acknowledging that parties may seek assistance from FTA, consistent with FTA's role in reviewing partial testing requests as described in section 665.11(d). FTA is also removing the term "Grantee" from the section heading and throughout this part, as FTA now uses the term "recipient."

*Comments Received:* FTA did not receive any comments on this section.

*Agency Response:* FTA is including this section in the final rule without change.

#### *Section 665.11 Testing Requirements*

FTA proposed new entrance requirements for a bus to enter the bus testing program. Before submitting a new bus model for testing, the transit vehicle manufacturer (TVM) would have to submit its disadvantaged business enterprise (DBE) goals to FTA consistent with the Department's DBE regulations in 49 CFR part 26. Test model buses would also need to comply with applicable FMVSS requirements in 49 CFR part 566, *Manufacturer Identification*; 49 CFR part 567, *Certification*; and 49 CFR part 568, *Vehicle Manufactured in Two or More Stages—All Incomplete, Intermediate*

*and Final-Stage Manufacturers of Vehicle Manufactured in Two or More Stages*. Bus models would also need to identify the maximum rated quantity of standee passengers identified on the interior bulkhead in 2 inch tall or greater characters; be capable of negotiating the Durability Test course at the requisite test speed under all conditions of loading (curb weight, SLW, and GVW); and be capable of following the test duty cycles used for Fuel Economy and Emissions Tests within the test procedure for allowable speed deviation. Lastly, FTA proposed that bus models submitted would need to satisfy the domestic content requirements for rolling stock in 49 CFR part 661, *Buy America Requirements*.

FTA also proposed a technical amendment to section 665.11(g) reflecting the addition of Appendix B to this part, resulting in the relabeling of the former appendix as the new "Appendix A."

*Comments Received:* FTA received multiple comments on this section. One commenter supported applying the Disadvantaged Business Enterprise (DBE) and Buy America requirement to bus models submitted for testing, stating that an inspection of a vehicle's domestic content prior to introducing a new foreign bus model is vital to preserve the integrity and reliability of the testing program and provides a level playing field among competitors, noting the importance of the test unit matching the composition of subsequent production units. Another commenter indicated that documentation of the vehicle's domestic content will assist future purchasers to assess the impact that changes in components could have on a vehicle's Buy America compliance. In contrast, several commenters opposed the Buy America content proposal—two noted that the buses submitted for testing are typically the private property of the bus manufacturer and are not being procured with FTA funds, with FTA funding serving as a determinant of Buy America applicability. Another commenter indicated that the requirement will discourage innovation by locking buses into a particular configuration and leaving no leeway for the introduction of new technologies. Another commenter requested that FTA consider alternative bus service life categories that account for the risk to grantees that procure new technology vehicles.

*Agency Response:* FTA is eliminating the proposed Buy America content requirement from section 665.11(a)(5) in the final rule. Instead, FTA will require that the manufacturing country of origin for the test vehicle's major components

be documented by the TVM during the test scheduling process—these would include the vehicle shell, axles, brakes, propulsion power system and auxiliary power systems (engine, transmission, traction batteries, electric motor(s), fuel cell(s)), and the primary energy storage and delivery systems (fuel tanks, fuel injectors & manifolds, and the fuel injection electronic control unit).

This is a modification from the NPRM, which proposed that all buses submitted for testing meet the domestic content requirements of the FTA Buy America regulation. The primary focus of the proposal was to ensure that the design configuration of the test unit bus matched subsequent production units. However, commenters made FTA aware that the test unit bus may not be fully representative of all production units, and that grantees have the ability to specify changes in a production unit's components and configuration. These changes may subject the bus to additional testing, but that is a decision that the purchaser must knowingly make. In addition, bus models delivered for testing do not always include all of the ancillary systems (seats, wheelchair tie-downs, passenger information systems, etc.) that may well be part of the domestic content calculation of a particular bus procurement but these systems are not evaluated by the bus testing program, nor are they required in order for the vehicle to under testing. Finally, changes in, or the inclusion of, components may also alter a production vehicle's domestic content, and documenting the test unit vehicle's domestic content in a permanent test report may give a false indication of a vehicle's Buy America content. FTA acknowledges that the pre-award and post-delivery audits required by 49 U.S.C. 5323(m) and 49 CFR part 663 are the only acceptable confirmation of a vehicle's Buy America compliance and for that reason, TVMs will not be required to document a vehicle's compliance with Buy America during the check-in process.

However, because the primary objective of the proposed requirement was to ensure that the design configuration of the test unit bus (structure design and materials, axles and brakes, and propulsion system and fuel systems) was representative of the production unit buses that would be delivered to FTA grantees, FTA is requiring TVMs to provide information concerning the source of essential vehicle components so that purchasers will have an effective means of comparing the test unit bus against the specific vehicle they intend to procure.

Lastly, to acknowledge the broader applicability of FTA's service life categories other than simply as a means of determining a vehicle's testing procedure, FTA is removing the list of vehicle service life categories in section 665.11(e) and will instead incorporate the service life categories contained in FTA's Circular 5010.1.

#### *Section 665.13 Test Report and Manufacturer Certification*

FTA proposed adding language to this section that would require the Bus Testing Facility operator to score the test results using the performance standards and scoring system outlined in Appendix A of this part. FTA also proposed that the Bus Testing Facility operator obtain approval of the Bus Testing Report by the bus manufacturer and by FTA prior to its release and publication. Finally, FTA proposed that the Bus Testing Facility operator make the test results available electronically to supplement the printed copies.

*Comments Received:* FTA did not receive any comments on this section.

*Agency Response:* FTA is including this section in the final rule without change.

#### *Section 665.21 Scheduling*

FTA proposed that all requests for testing, including requests for full or partial testing, be submitted to the FTA Bus Testing Program Manager prior to scheduling with the Bus Testing Facility operator. All test requests would provide: a detailed description of the new bus model to be tested, the service life category of the bus, engineering level documentation characterizing all major changes to the bus model, and documentation that demonstrates satisfaction of each one of the testing requirements outlined in section 665.11(a). FTA would review the test request and determine if the bus model is eligible for testing and which tests need to be performed. FTA would prepare a written response to the requester for use in scheduling the required testing with the Bus Testing Facility operator.

*Comments Received:* FTA received two comments on this section. Both comments asked FTA to commit to a maximum amount of time to review the test requests and provide a response to the requester.

*Agency Response:* FTA will commit to reviewing the test request and providing an initial response within five business days. Some requests, particularly requests for partial testing of a bus model that has undergone the testing process but is subsequently produced with a change in configuration or

component, may require additional time to review the specific design and engineering changes proposed and provide a final response.

#### *Section 665.23 Fees*

FTA proposed that the manufacturer's share of the test fee would be expended first during the testing procedure and that the Bus Testing Facility operator would obtain approval from FTA prior to committing FTA program funds.

*Comments Received:* FTA did not receive any comments on this section.

*Agency Response:* FTA is including this section in the final rule without change.

#### *Section 665.25 Transportation of Vehicle*

FTA did not propose any changes.

*Comments Received:* FTA did not receive any comments on this section.

*Agency Response:* FTA is including this section in the final rule without change.

#### *Section 665.27 Procedures During Testing*

FTA proposed additional language for this section to require the Bus Testing Facility operator to inspect the bus model configuration upon arrival to compare it to that submitted in the test request; to compare the gross vehicle weight and gross axle weights to the ratings on the bus; to determine if the bus model can negotiate the test track and maintain proper test speed over the durability, fuel economy and emission drive cycles; and to provide these results to the bus manufacturer and FTA prior to conducting testing using FTA program funds.

FTA also proposed additional language to require the Bus Testing Facility operator to investigate each occurrence of unsupervised maintenance and assess the impact on the validity of the test results and to repeat any impacted test results at the manufacturer's expense. FTA also proposed language to address modifications to bus models undergoing testing. Specifically, FTA proposed that the Bus Testing Facility operator perform or supervise and document the performance of bus modifications only after the modifications have been reviewed and approved by FTA. The language also stated that testing would be halted after the occurrence of unsupervised bus modifications and the Bus Testing Facility operator would not resume testing until FTA has issued a determination regarding the modifications.

In addition, FTA proposed moving the listing of test categories from

Appendix A into section 665.27 and assigning performance standards to each of the test categories as MAP-21 requires. FTA proposed amending the Performance Test category by removing the language regarding the Braking Performance Test and moving it into the Safety Test category. FTA also proposed adding the requirement for a review of the Class 1 failures documented in the Reliability Test category to the Safety Test category.

*Comments Received and Agency Response:* FTA received numerous comments on this section. One commenter asked how many days FTA would need to perform the test readiness review and issue a decision regarding the start of testing. The other comments on this section were pertaining to the specific tests and the proposed performance standards, which are summarized as follows:

#### *Structural Integrity*

There were nine comments on the *Structural Integrity* test category and the associated performance standards. In response to comments, several refinements were applied to the final rule.

FTA received two comments concerning the *Shakedown* test and performance standard, with one recommending a maximum deflection of 0.100 inch to account for the floor load of a passenger on a wheeled mobility device, the second challenging the relevance of the test and considering it to be redundant with the test track durability test. The *Shakedown* test in section 665.27(h)(5)(i)(1) has been eliminated as FTA believes that this test is a legacy test procedure that pre-dates the bus testing program and provided a means to verify a level of structural integrity at a transit agency facility in lieu of performing a test track durability test. Any incremental value provided by the *Shakedown* test in light of the *Structural Durability* test performed on the test track is not apparent.

One commenter inquired whether the *Dynamic Towing* test would capture any structural or other types of failures throughout the bus and if the test was performed in a stop-and-go manner including the negotiation of turns. FTA is not making any changes to section 665.27(h)(5)(i)(4) regarding the *Dynamic Towing* test and performance standard. The *Dynamic Towing* test is a demonstration that the bus can be safely and effectively towed by a common heavy duty vehicle tow truck, without regard to operational usage or negotiation of turns. The test, however, does induce unique loads into the bus structure and on the rear axle of the bus,

as the five-mile towing distance performed during the test is continuous around the paved test loop.

One commenter questioned the relevance of the *Jacking* test and recommend that FTA seek the input of transit operators. FTA is not revising section 665.27(h)(5)(i)(5), the *Jacking* test. FTA believes that this test remains relevant, that a bus model that fails to meet the performance standard could be a significant operational problem for transit operators, and that the time and cost burdens of conducting the test are minimal.

Another commenter suggested that FTA consider evaluating the corrosion resistance of bus models during the structural durability test. One commenter offered a proposal to evaluate the corrosion resistance of new bus models. FTA considered this proposal and believes that this non-testing based evaluation does not provide sufficient technical analysis on which to base a score, in addition to being outside the scope of this rulemaking.

One commenter proposed that FTA to make bus models available to component suppliers to use for partial testing programs to enable the development of robust aftermarket components and new technology subsystems. While this is an interesting proposal, this is also outside the scope of today's rulemaking and FTA would need a significant increase in funding in order to acquire and maintain a fleet of buses to serve as platforms for the testing of new components and technologies.

#### Structural Integrity—Durability

There were several comments requesting clarification on the implications of the proposed durability performance standards and suggestions for alternatives methods for evaluating both structural and powertrain durability of new bus models, components, and subsystems.

First, FTA was asked to clarify the types of failures that invoke a failure to meet the durability performance standard and the process for resolving those failures. The commenter wanted to know if there were certain types of failures that would automatically trigger a test restart, if FTA could commit to a response time to provide feedback about the proposed design remedy to resolve a durability failure. The commenter proposed that FTA consider not requiring a mile-for-mile validation of structural durability failures that are not Class 1 or Class 2 level reliability failures through the use of stress and strain measurements and common

structure modeling techniques, and suggested that FTA allow the durability test to continue after a durability performance standard failure so that testing can progress while the bus manufacturer prepares the design remedy.

To clarify, then, for the structural durability performance standard, any discontinuity (*e.g.*, cracking, deformation, or separation) that develops during the test in any of the bus material elements that are permanently affixed, through welding or other bonding methods including non-serviceable fasteners such as rivets, whose function is to bear the weight of the vehicle or the weight of the passengers, or maintain the physical geometry of other load bearing elements and openings in the bus body, or that secure and retain other non-bonded bus body components will be considered a failure to meet this performance standard. Material discontinuities that develop during the test in the main frame rails and the frame cross-members on body-on-frame bus models will also be considered a failure of the structural durability performance standard. For the powertrain durability performance standard, all malfunctions of bus powertrain system will be classified as a failure of the powertrain durability performance standard until remedied and validated. Structural failures of the powertrain components, including any associated bracketry, mounts, cradles, and fasteners used to physically attach the components to the bus body or frame are also considered a failure of the powertrain durability performance standard.

If the *Durability* test reveals a durability performance standard failure, the structural durability test will be paused awaiting a proposed design remedy from the bus manufacturer. FTA will review the proposed remedy and provide a response to the proposed design remedy within five business days. The intent of the FTA review is to evaluate that the proposed design modification is relevant to the failure mode and that it is suitable for production.

FTA will employ the existing partial testing policy for powertrain changes or updates to new bus models that are subject to the Pass/Fail rule. Currently, FTA focuses on the engine, transmission fuel system, and drive axle to assess if partial testing is needed. Once each of these new components has been tested in a bus, FTA allows their use in subsequent bus models without additional testing based on FTA's experience that the replacement of these components is not likely to significantly

alter existing test data in the Bus Testing Report. While the scope of the powertrain durability performance standard casts a wider net than the partial testing policy for powertrain changes, bus manufacturers will be allowed to substitute minor powertrain components not currently tracked by the current partial testing policy if a credible analysis is provided that demonstrates the component substitution is durable in a transit service environment and that secondary failures of the primary powertrain components are not induced if the substituted component fails. FTA does not believe that the supply of aftermarket parts available to transit operator for maintaining their buses will be negatively affected by the powertrain durability performance standard. FTA only requires that the buses remain in service for at least their designated service life. Grantees do not have to maintain the original design configuration throughout a vehicle's service life and may replace components and major subsystems over the vehicle's lifespan.

Commenters also sought clarification regarding the inclusion of electric bus model off-board charging equipment in the powertrain durability performance standard. Currently, all battery bus chargers are unique to the bus models. If the charging system fails to perform, the bus can only operate on the remaining charge. For bus fleets that employ bus models designed for overnight charging, FTA assumes that more than one battery charger will be available at the bus depot, providing a charging system redundancy that can be leveraged to maintain bus operations. These battery chargers would not be considered as part of the vehicle's powertrain. For bus models designed specifically for on-route charging, the off-board charging system and the on-board charging system interfaces are considered part of the bus powertrain. Additionally, since all bus charging systems are unique, all electric bus models are subject to the testing requirement. The Bus Testing Facility operator provides access to a high voltage source for the battery charger, while the TVM or component vendor is expected to provide the battery charger with the bus model to be tested. Once battery charging systems for buses become standardized, FTA will pursue their installation at the test site.

Various commenters also proposed alternative durability tests. First, one commenter proposed the use of a risk assessment and field monitoring process for the introduction of new bus technologies on an existing bus model

as a substitute for performing partial testing. While this concept has some merit, it would not satisfy the current legislative mandate to conduct actual testing and additional program resources would need to be made available in order to execute this type of program. Another commenter requested that FTA reduce the amount of additional test mileage required to validate a design modification in the event of a failure to meet the durability performance standard. This commenter suggested a combination of stress and strain measurements and analytical models to be used to validate that the probability of the stress induced structural discontinuities in the bus have been reduced or eliminated with the new design. FTA considered the merits of this proposal and has decided that in cases where there is not enough remaining mileage in a test procedure to validate the design change on an actual mileage basis, FTA will consider the manufacturer's efforts to characterize the material stresses through measurements, analyses, and other engineering work to determine an adequate test distance to validate the analysis and the proposed design remedy.

#### Safety

There were multiple comments related to the *Safety* test category. Seven commenters recommended that FTA consider heightened standards with respect to the flammability of interior materials to address the inadequacies of Federal Motor Vehicle Safety Standard (FMVSS) 302. Although establishing fire safety standards for bus testing program is outside the scope of the NPRM, FTA reviewed the large number of vehicle interior fire safety information submitted by various commenters. FTA notes that updating FMVSS 302 is not within FTA's regulatory authority and suggests that commenters direct their comments to the National Highway Traffic Safety Administration, the U.S. DOT mode responsible for maintaining the FMVSS.

Another commenter suggested that FTA establish a requirement for the use of collision avoidance systems in transit buses, while another recommended that FTA establish crashworthiness test standards for buses. The commenter's recommendation to establish safety performance standards to require collision avoidance systems and crumple zone or other crashworthiness standards on transit buses are not within the scope of the NPRM, as is the proposal to establish braking standards for emergency stops on a grade and the recommendation to adopt performance

standards for wheeled mobility device securement devices.

One recommended that the acceleration test be inserted into the *Safety* test category and that FTA adopt performance standards for mobility aid securement devices. The suggestion to move the acceleration test into the *Safety* test category is not being adopted because FTA believes this test is more pertinent to the vehicle's performance, rather than affecting the vehicle's safety.

Additional commenters sought clarification on the definition of Class 1 failures. With regard to the commenter who sought clarification on whether structural failures should be addressed as hazards, FTA considers the following types of test incidents as Class 1 reliability failures resulting in a failure to satisfy the *hazards* performance standard: (1) the loss or degradation of the obstacle avoidance capability (braking, steering, & acceleration/speed control) of the bus due to a component malfunction. For example, a loss of power steering is considered a Class 1 reliability failure due to the expected increase in the force required to turn the steering wheel, reducing the rate of directional change a driver can effect into the bus and compromising its ability to avoid an obstacle; (2) the occurrence of a fire or the potential for a fire (e.g. fuel leak in the presence of an ignition source, electrical short circuit, leaks of other flammable fluids near an ignition or heat source); (3) major structural failures that can induce conditions (1) or (2) above, or lead to a physical compromise of the passenger compartment (an unintended exposure to the outside environment or physical trauma to a passenger) or degrades the ability of a passenger to exit the bus.

Regarding the proposed testing and performance standards for *Braking*, one commenter recommended the elimination of the brake stopping distance test and the use of FMVSS certification testing results. Another commenter recommended that the buses be weighted to the maximum gross passenger load for the braking test, and another asked FTA to establish additional brake performance requirements for stopping on a grade. The commenter's suggestion to eliminate the stopping distance test was not accommodated, as a braking performance test is required by statute, and FMVSS compliance is based on self-certification, whereas FTA's is based on actual test data. FTA is adopting the suggestion to conduct the stopping distance test at a full passenger load by conducting an additional set of brake stops at gross passenger load. However, the stopping distance

performance standard will be assessed using the test results with the bus loaded to seated load weight as was proposed in the NPRM.

#### Reliability

One comment to the *Reliability* test category and proposed performance standard recommended that flat tire incidents not be counted as a test failure, as flat tires are commonly caused by road debris and not by bus design.

FTA does not agree with the commenter's suggestion to ignore the occurrence of flat tires during the test and not count them against the *Reliability* performance standard. Flat tires that are the result of a physical interference or structural problem will need to be addressed and resolved prior to test completion, but flat tires due to the presence of debris on the test track will not be documented in the test report.

#### Noise

Two comments to the *Noise* test category and proposed performance standards were offered. The first requested clarification as to how the performance applied to electric bus charging systems. The second suggested that the noise levels, while traversing a fixed object, such as a speed bump, be measured during the noise test.

FTA will accommodate the request to measure noise levels while the bus traverses road irregularities, as the current audible vibration test is conducted over the road while travelling from the test track to the main maintenance shop area in Altoona. In addition to the over the road segment this general interior noise test will be conducted on the test track. However, there is no minimum performance standard or scoring associated with this test, and noise testing of an electric bus will not be conducted while it is being charged, as it is not directly related to the vehicle's durability or performance.

#### Performance

Two similar comments on the *Performance* test category and performance standard suggested that FTA conduct the tests in this test category at a fully-weighted or gross passenger load.

With regard to the suggestion to conduct acceleration and gradeability tests at the maximum gross passenger load, current tests are conducted at a seated passenger load and there is no technical basis to conduct additional test runs. However, expected performance standards for acceleration and gradeability can be extrapolated

using the results from the seated passenger load test runs.

For the check-in procedures outlined in section 665.27(b), FTA has revised the language to provide FTA five business days to review the results from the procedure outlined in 665.27(a) and provide a decision to either start the test or to request clarification about the results of that review. To prevent administrative test delays, the Bus Testing Facility operator has the authority to commence specific tests where FTA does not provide a response within five business days and the performance of those tests is not dependent on FTA's determination.

#### *Appendix A to Part 665—Bus Model Scoring System and the Pass/Fail Standard*

FTA proposed adding tables as Appendix A to graphically illustrate the new Bus Model Scoring System and the Pass/Fail Standard.

#### *Comments Received*

Four commenters expressed a concern that the aggregate score will encourage grantees to use the score blindly and not read the actual content of the test reports. They also expressed a concern that a procurement protest could be filed if they selected a bus model that did not have the highest score of those submitted for bid. In addition, one commenter wanted to know if they would be allowed to apply a different weighting to the scoring system than the weights assigned by FTA.

FTA also received several comments regarding the fuel economy test and the fuel economy scoring system. Two commenters were concerned that the new dynamometer based fuel economy test method will not differentiate the efficiency differences between heating, ventilation, and air conditioning (HVAC) systems installed on the test buses and that the new test methodology does not fully reveal the potential of the new hybrid bus technologies. Two commenters strongly recommended that FTA employ a universal fuel economy scoring system for use with all fuel types, to illustrate the higher fuel economy of electric and hybrid-electric vehicles. Another commenter recommended that the fuel economy scores for 60-foot bus models be adjusted higher by 150 percent to reflect the additional weight of the vehicle.

**Agency Response:** In regards to the concerns about the use of the scoring system as a primary determinant in procurement decisions, FTA will insert a disclaimer in test reports explaining that the using the test scores as the

determinative factor in a competitive procurement is not required. Grantees may use their own specified selection criteria, so long as the selected bus model received a passing test score. Grantees are allowed to establish evaluation criteria more stringent than those used in FTA's testing program or to use an alternative weighting for the scoring of the test results, provided that those criteria do not violate FTA's requirement for full and open competition (See 49 U.S.C. 5323(a)).

Based on comments that the *Shakedown* test is redundant in light of the broader *Structural Durability* test, FTA is eliminating the *Shakedown* test and moving the base points (1.0) associated with the test into the *Structural Durability* test category, increasing the value of the later test from 12.0 to 13.0 points. Regarding the comments requesting modification of the *Fuel Economy* test procedure to reflect the effect of HVAC operation on fuel consumption, neither the existing test track test procedure nor the dynamometer procedures are capable to testing the effects of various HVAC systems on the measured fuel economy. While the testing is conducted with the ventilation fan engaged, the air conditioning and the heating system controls are set to the equivalent of an "off" state. Although evaluating the effect of HVAC systems on fuel economy is technically possible, it would require that the dynamometer facility be capable of maintaining extreme temperatures to accurately stress the HVAC systems and the overall thermal performance of the bus body. Performing this type of testing would require a significant capital investment in the test facility and also would require a significant increase in testing fees.

Both the test track and dynamometer-based fuel economy tests do not expressly inhibit engine-off hybrid buses from turning their engines off during the test procedure. Two of the three dynamometer-based test cycles are actual transit duty cycles. Because buses are designed to operate in an efficient manner, a bus should end with the battery state of charge (SOC) at the same level or higher than at the start of the test cycle. This may require the vehicle to idle for an additional time period to restore the battery's SOC.

Several commenters on the proposed fuel economy scoring scale recommended using a single scoring for all fuel types instead of the individual fuel-specific scales proposed in the NPRM. A scale such as Miles per Gallon diesel equivalent (MPGde), conceptually based on the current Miles Per Gallon

equivalent (MPGe) scale developed by the Environmental Protection Agency (EPA) for light duty vehicles<sup>1</sup> and adjusted to the diesel fuel energy equivalent, was considered. The MPGe scale expresses the fuel economy of all other vehicle fuel types in terms of the energy equivalent of a gallon of gasoline. This methodology examines the efficiency of each vehicle's energy to power conversion from the fuel tank to the wheels but does not account for the efficiency of producing and delivering the fuel to the vehicle.

FTA strongly believes that given the wide range of fuel types available in the transit bus marketplace, the best and most commonly cited scoring metric for fuel economy is fuel cost per operating mile. However, due to the volatility of fuel prices, regional fuel price variances, and the variance in the availability of various fuels, establishing a standardized baseline for fuel economy test results based on fuel cost per operating mile is inherently problematic for inclusion in the rule.

FTA examined the use of MPGde for the scoring of the fuel economy test results but declines to adopt such an approach for several reasons. First, MPGde does not factor the energy cost efficiency of each fuel type into the calculation. High values of MPGde do not always indicate low overall fuel operating costs which is a top bus performance priority for most agencies. For example, hydrogen fuel cell buses would be expected to have an MPGde rating more than twice as high as a diesel bus but the fuel currently costs more than three times that of diesel fuel on a gallon equivalent basis resulting in higher overall fuel operating costs. Similarly, CNG buses would be expected to have an MPGde rating about 20% lower than that of a diesel bus but the fuel itself costs less than half that of diesel making it a popular choice in many locales even when the capital and operating costs of the fueling stations are considered.

Second, MPGde does not account for the significant fueling infrastructure costs of most alternative fuels introduced into transit fleets, nor does MPGde account for the significant differences in maintenance facilities, maintenance practices and tools, and maintainer skill sets required for each fuel type. While the choice between gasoline and diesel is not an issue for private owners of passenger vehicles, who can take the vehicle to any number of car dealers or maintenance garages, switching or adding a new bus fuel type

<sup>1</sup> <https://www3.epa.gov/otaq/carlabel/electriclabelreadmore.htm>.

can be a significant undertaking for most agencies with respect to bus maintenance. Although MPGde could be considered relevant to an overarching Federal interest in minimizing transportation energy consumption, FTA believes that MPGde is not used by transit agencies as it is not a clear indicator of fuel operating costs.

Third, MPGde only assesses the fuel efficiency of the vehicle from the vehicle's fuel tank to the wheels and not the true "well-to-wheels" efficiency of the complete fuel chain. This methodology generates an artificially high MPGde value for electric vehicles as most of the costs of generating and delivering electric "fuel" take place off-board the vehicle at the electric powerplant and along the power transmission lines. For instance, a bus can consume compressed natural gas (CNG) and achieve one MPGde value, versus burning CNG to fuel an electric powerplant and delivering the electricity over wires to charge an electric bus, with a resultant MPGde rating approximately five to six times greater than that of the CNG bus due primarily to the efficiency accounting methodology and not the actual well-to-wheels fuel efficiency. Therefore, FTA believes that adopting MPGde is not a suitable scoring mechanism to indicate the Federal priorities for energy sustainability to the transit industry.

Lastly, if FTA scored the fuel economy results using MPGde, the resulting inflated electric vehicle MPGde values will require expanding the range of the scoring scale significantly. Due to the current scale having a fixed number of points, the resolution of the scale will be reduced, making all bus models of the same size class and fuel type look identical with respect to the score. This defeats the primary purpose of the program which is to provide agencies objective information for the selection of bus models during the bus procurement process.

By maintaining the separate proposed fuel economy scoring scales, the well-to-wheels efficiency differences of different fuel types are neutralized as each fuel type has its own scale. This approach highlights the efficiency differences between bus models of the same fuel type which is very useful for transit agencies while still supporting the Federal interest in reducing transportation fuel consumption.

#### **D. Regulatory Analyses and Notices** **Executive Orders 13563 and 12866 and DOT Regulatory Policies and Procedures**

This rulemaking is a significant regulatory action within the meaning of Executive Orders 13563 and 12866, and FTA has determined that it is also significant under DOT regulatory policies and procedures because of substantial State, local government, congressional, and public interest. However, this rule is not "economically significant," as defined in Executive Order 12866.

This section explains the purpose of the bus testing program, why FTA is establishing a pass/fail requirement with a point-based system and how that fits within FTA's mission, the alternative scoring systems FTA considered, the logic that FTA employed in determining the weights assigned to the different test categories, FTA's rationale for prioritizing use of the manufacturer's portion of the testing fee, and FTA's analysis of the costs and benefits.

#### **Alternative Scoring Systems Considered**

While reviewing and developing scoring systems to meet the MAP-21 requirements, FTA considered a number of alternatives. To begin, FTA considered the importance of the entirety of the safety tests within the existing Bus Testing Program. Noting how integral to the bus testing program each of the testing categories were, FTA wanted to ensure that the buses that were tested, at the very least, met all of the minimum performance standards, regardless of the scoring system that FTA adopted. Stated differently, FTA resolved that the scoring system would have to preclude a bus model from passing the test solely by attaining additional points in other categories (while failing in one or more key categories), resulting in points greater than the threshold that FTA set for the pass/fail standard. FTA also wanted to ensure that whatever system FTA adopted would be relatively simple, straightforward, and easy to understand, and provide meaningful information to both transit agencies and manufacturers. Using these principles, FTA assessed various systems that FTA could adopt or implement to meet the requirements of MAP-21.

FTA first considered various qualitative systems. FTA reviewed a "five-tier" based system, as used by other organizations. FTA liked the simplicity of the five-star system for grading buses that met the minimum

requirement of passing all of the tests. While FTA's review of various systems indicated that such qualitative systems are simple to implement, they can be very subjective. Moreover, the five-tier system did not capture the level of detail and differential information that FTA desired to convey to the transit industry and manufacturers. FTA also reviewed and considered an "A to D" based grading system. Again, while this would have resulted in a fairly simple and straightforward system, it did not convey the level of information or the level of detail to inform transit agencies who are purchasing the vehicles. Thus, FTA rejected these two qualitative systems. While they were simple, straightforward, and easy to understand, they did not meet FTA's goal of providing meaningful information to transit agencies and manufacturers.

Next, FTA considered quantitative point-based systems with the minimum threshold requirement of passing all of the tests. FTA considered various scales. FTA rejected a 50-point based scale for lack of simplicity. FTA considered an 80-point scale (10 points for each test category) and rejected it because it did not capture the relative importance or weighting of the categories. FTA also considered various levels for the pass/fail threshold for each of the scales. Finally, FTA settled on a 100-point scale due to its universality. FTA initially considered a minimum passing score of 40 points, believing the 60 discretionary points would provide purchasers with a greater range with which to evaluate different vehicles, but given the grading systems used in academia and other applications, FTA established a minimum passing threshold of 60 points with 40 discretionary points. This quantitative scale with the minimum threshold of passing all of the tests met all of FTA's goals that the scoring system is relatively simple, straightforward, and easy to understand, and will provide meaningful information to transit agencies and manufacturers.

#### **Logic Used To Determine Weighting for Tests and Sub-Tests**

After deciding to propose a 100-point scale for the Bus testing program, FTA had to weigh the importance of each of the test categories within the Bus testing program. FTA determined that the Structural Integrity and Safety Tests were the most important components of the bus testing program, as both were critical to the operation of the vehicle while on the road. Therefore, FTA allotted 50 of the total 100 points to these two tests. Between the two tests, FTA determined that while both were



important, the Structural Integrity Test was more important than the Safety Test, based on its greater importance in evaluating a vehicle's construction, design, and ability to meet service life requirements. Hence, FTA assigned 60 percent of the points for these tests to the Structural Integrity Test and the remaining 40 percent to the Safety Test.

Within the Structural Integrity Test are six sub-test categories, of which five are pass/fail tests. Thus, FTA allotted one point each for the Distortion, Static Towing, Dynamic Towing, Hydraulic Jacking, and Hoisting Tests. The Durability Test, as the most important component of the Structural Integrity Test, received the remaining 25 points. Within these Durability Tests, FTA allocated 13 points to structural durability and 12 points to powertrain durability due to importance to meeting service life requirements.

For the Safety sub-tests, FTA determined that the Hazards Test was as important as the other two sub-tests within this category and allotted it one-half of the total 20 points. The Stability and Braking Tests have three component tests that require a pass/fail grading and one that is a performance based allocation. FTA valued each of these tests equally, based on their relative importance when evaluating a vehicle. Hence, FTA apportioned 25 percent of the remaining points to each test.

For the Maintainability and Reliability Tests, FTA assessed the Maintainability Test to be twice as important as the Reliability Test, but both tests to be as important as the remaining tests, as both directly affect a transit agency's operating costs. Maintainability reflects how much time and resources the transit agency should expect to budget over the course of a vehicle's service life to perform routine maintenance, and reliability reflects a vehicle's ability to meet its service life requirements without significant service disruptions caused by unscheduled maintenance. For ease of assigning points within the weightings, FTA allocated 24 points (or just less than one-half of the 50 points for the remaining tests) to these two tests. Hence, within FTA's weighting scheme, the Maintainability Test received 16 percent of the total points and the Reliability Test received eight percent of the total points.

Assessing the remaining four tests, Fuel Economy, Emissions, Noise, and Performance Tests, FTA determined that each was about the same level of importance based on comments from transit agencies, but that two, Fuel Economy and Emissions Tests, were

slightly more important in terms of helping a transit agency to budget for a vehicle's fuel consumption over its lifetime and in calculating the vehicle's incremental benefit towards meeting Clean Air Act requirements. Therefore, as opposed to assigning equal weighting to each of the remaining tests, FTA allocated slightly more weight to the Fuel Economy and Emissions Tests than the Noise and Performance Tests. This resulted in a point allocation of seven points or 27 percent of the remaining points for the Fuel Economy and Emissions Tests and an average of six points or 23 percent of the remaining points for the Noise and Performance Tests.

The Fuel Economy Test allocates points on a performance basis determined by the output of the type of fuel. For the Emissions Tests, FTA apportioned one-half point for each of the five Emissions Tests that are already regulated by other Federal agencies and the remaining points for the Carbon Dioxide Test. This weighting for carbon dioxide captures the importance of alternative fuels with respect to greenhouse gases.

The Noise Test allocates points on a performance basis determined by the level of decibels produced. FTA weighted the Interior Noise and Exterior Noise Test equally (3.5 points each). As for the Performance Test, FTA weighted the bus model performance on a 2.5 percent grade and the performance during the acceleration test as being equally important and together being worth 60 percent of the five points available. The performance on a 10 percent grade was valued at 40 percent of the Performance test category.

#### Testing Fee Prioritization

In order to preclude buses that are not ready to complete the bus testing program, the NPRM proposed to exhaust the manufacturer's 20 percent contribution for the total testing fee prior to employing funds from FTA's 80 percent contribution. This prioritizing of the manufacturers' portion of the test fee will incentivize transit vehicle manufacturers to ensure that the bus model submitted will, at a minimum, clear the initial check-in inspections, passenger loading, and initial testing operations. FTA estimates that, depending on the bus model, the first 20 percent of the testing fee should encompass the check-in process and threshold tests.

Based on previous testing experience, FTA determined that bus models that fail these preliminary activities will not perform well during subsequent tests. This policy minimizes the cost to FTA

from bus models submitted before they are ready for testing, thereby conserving Federal resources and ensuring that the proper incentive structures are in place. This will encourage manufacturers to ensure their product can withstand the rigors of bus testing. FTA would continue to pay the 80 percent Federal match for one retest and would contribute no Federal funds for a third test or subsequent tests required to achieve a passing test score.

#### Cost-Benefit Analysis

This section contains FTA's analysis of the benefits and costs of the rule. FTA estimated the rule's benefits and costs through two steps: First, FTA identified and analyzed the costs of the existing Bus testing program (baseline). Second, FTA identified and analyzed the expected costs of the rule relative to the baseline. To determine the benefits and costs of the rule, FTA reviewed the test data for all bus models that had been tested at the Bus Testing Facility between January 2010, when the Environmental Protection Agency's (EPA's) current Diesel Engine Emission Standards took effect (40 CFR part 86, as amended, 66 FR 5002, January 18, 2001), and February 2013, when this rulemaking commenced. The resulting diesel engine exhaust after-treatment systems used to satisfy the 2010 requirements potentially impacted the reliability, maintainability, fuel economy, emissions, and noise test results for a portion of the 49 buses. Additionally, there were OEM product updates to many of the medium-duty chassis used by the five, seven, and ten year service life buses that would affect test results in several test categories.

A total of 49 buses had been tested over this period. FTA believes that the test results for these 49 bus models tested since 2010 provide the best available source of information for determining the cost of the rule on future buses that would be tested (and the models they represent). All bus types and sizes are included in the group of 49, from accessible vans to 60-foot articulated bus models. Buses fueled by compressed natural gas (CNG), electricity, diesel, gasoline, and liquefied petroleum gas (LPG) are included within this group. To determine qualitative benefits, FTA also examined the test results and the transit experience with two bus models tested (prior to 2010) that failed to meet their service life requirements in transit service. FTA has placed the test results of the buses that it analyzed in the docket for this rulemaking.

## Costs

A summary of the results of FTA's cost analysis is presented in Table H-1. Eight categories of costs were identified, analyzed, and annualized:

1. *Cost of Required Bus Design*

*Changes:* This category is the estimated annual cost of applying the design changes and components necessary to comply with all of the proposed performance standards to all affected bus models produced in one year.

2. *Lost Value of Test Buses:* This category estimates the depreciation cost of a bus subjected to the testing process. For each of the 49 buses models tested from 2010 through 2012, the full retail

value was estimated by identifying a recent purchase value from the 2013 APTA Fleet Report and applying a depreciation factor of 50% to bus models that underwent a durability test and a factor of 20% for bus models that only underwent performance and other non-durability related tests.

3. *Shipping of Test Buses:* This category estimates the cost of shipping the test buses to the Bus Testing and Research Center and back to the manufacturer. The actual/estimated distance that each of the 49 bus models traveled was determined and was used for FTA's calculations. Table H-0 presents this data. For 10-, 7-, 5-, and 4-

year buses, a cost of \$2.00 per mile was used to estimate the shipping cost. This cost is based on a recent shipment of a mid-sized bus on a truck. For heavy-duty 12-year diesel fueled buses, a cost of \$1.61 per mile was used to cover the costs of driving the bus to the test center and back. The estimated fuel costs were calculated using the bus model's measured highway fuel economy and a fuel price of \$3.00 per gallon was added. For heavy-duty buses powered by natural gas or electricity, a shipping cost of \$4.00 per mile was applied. This cost represents the cost to ship these bus models on a truck.

TABLE H-0—DISTANCE TRAVELED TO AND FROM TEST CENTER

Report No.	Service life	Actual/Estimated shipping distance to and from test center	Shipped via truck to and from test center
1001 .....	7	490	
1002 .....	7	490	
1003 .....	12	549	
1004 .....	7	490	
1005 .....	7	1014	
1006 .....	10	490	
1007 .....	12	310	
1008 .....	7	490	
1009 .....	7	490	
1010 .....	10	975	
1011 .....	12	780	
1012 .....	7	490	
1014 .....	7	490	
1015 .....	12	1400	
1016 .....	12	1400	X
1017 .....	4	490	
1101 .....	12	1400	
1102 .....	7	490	
1103 .....	7	1112	
1104 .....	10	490	
1105 .....	7	1112	
1106 .....	7	490	
1107 .....	12	574	X
1108 .....	12	482	
1109 .....	12	2676	X
1110 .....	10	490	
1111 .....	7	490	
1112 .....	7	490	
1113 .....	7	430	
1114 .....	7	490	
1115 .....	4	1112	
1116 .....	7	1112	
1117 .....	12	310	
1118 .....	12	1400	X
1120 .....	7	490	
1201 .....	7	490	
1202 .....	12	310	
1203 .....	7	430	
1204 .....	7	1112	
1205 .....	12	1400	
1206 .....	12	2676	X
1207 .....	7	1112	
1208 .....	7	430	
1210 .....	7	1112	
1211 .....	12	1400	
1212 .....	7	955	
1213 .....	12	482	
1214 .....	7	1112	X
1215 .....	4	490	

4. *Parts Consumed:* This cost category is for the cost of parts consumed during the test.

5. *On-Site Personnel:* This cost category is for the cost of maintaining manufacturer personnel on-site at the test center. For each test of a heavy-duty bus, the cost of a mechanic's labor (\$20.35 an hour), lodging, and per diem at State College, PA for three full months. Manufacturer personnel are often on-site during the testing of heavy-duty bus models.

6. *Paperwork Burden:* This cost category covers the costs to

manufacturers of providing mandatory information to the bus testing program.

7. *Manufacturer Testing Fees:* This cost category covers the 20 percent testing fees that the manufacturers pay to have testing conducted.

8. *FTA Program Cost:* This cost category covers the funding provided by FTA to cover 80 percent of the costs associated with testing a bus model.

FTA estimates the costs of the existing bus testing program are as follows: The maximum total annual program cost is \$3,750,000 with 80 percent (\$3,000,000) covered by FTA and 20 percent (\$750,000) paid by transit vehicle manufacturers who submit a bus for

testing. The current Paperwork Reduction Act reportable costs are \$9,016. The estimated annual cost of on-site manufacturer personnel is estimated to be \$76,673. The value of the parts consumed in the testing process is unknown. The annual estimated bus shipping costs for the current program is \$63,743. The estimated annual test bus depreciation cost is \$1,591,714. The annual cost of bus design improvements as a result of the current program is assumed zero as there are no minimum performance standards requirements. The estimated annual cost of the current bus testing program is \$5,491,146.

TABLE H-1—SUMMARY OF COST ANALYSIS RESULTS

[All values in \$]

	Cost of req'd bus design changes	Lost value of test buses	Shipping of test buses	Parts consumed	Manufacturer on-site personnel	Paperwork burden	Testing fees	FTA Program cost
Baseline-current program .....	0 .....	1,591,714	63,743	unknown .....	76,673	9,016	750,000	3,000,000
Proposed MAP-21 Minimum Proposed Performance Standards and Scoring System.	unknown .....	0	2,209	unknown .....	5,103	767	33,362	133,448
Proposed Discretionary Program Changes	58,308 .....	0	0	0 .....	0	2,810	- 15,328	- 61,310
Revised Bus Payloading Procedures .....	58,308 .....	0	0	0 .....	0	1,488	- 74	- 294
Elimination of On-Road Fuel Economy Test	0 .....	0	0	0 .....	0	0	- 16,000	- 64,000
Revised Bus Passenger Load for Emissions Testing.	0 .....	0	0	0 .....	0	0	- 118	- 470
Bus Testing Entrance Requirements .....	0 .....	0	0	0 .....	0	0	664	2,654
Revisions to the Test Scheduling Requirements.	0 .....	0	0	0 .....	0	1,322	0	0
Test Requirements Review Milestone .....	0 .....	0	0	0 .....	0	0	0	0
Penalty for Unauthorized Maintenance & Modification.	0 .....	0	0	0 .....	0	0	200	800
Estimated Program Costs (Baseline & New Proposals).	58,308 .....	1,591,714	65,952	unknown .....	81,776	12,593	768,034	3,072,138
Total .....	.....	.....	.....	.....	.....	.....	.....	5,650,515
Baseline Total .....	.....	.....	.....	.....	.....	.....	.....	5,491,146
Incremental Program Cost .....	.....	.....	.....	.....	.....	.....	.....	159,369

To estimate the costs of the rule, FTA first identified all of the bus models in the study group of 49 that would fail to meet the standards.

The most significant cost caused by this rule will be the cost of retesting to

validate a vehicle that has failed one or more tests. Eight of the 49 buses FTA examined failed one or more tests. The below table identifies each test these buses would have failed, thus triggering the retesting requirement. FTA also

estimated the costs for retesting, and in two cases, the cost of a potential remedy.

TABLE H-2—SUMMARY OF THE COSTS FOR RETESTING FAILED BUS MODELS

[Cost of remedying and retesting bus models (2010–2013) that would fail a proposed performance standard (\$)]

Bus (report No.)	Failed test category	Cost of required bus design changes	Lost value of test buses	Shipping of test bus back to manufacturer for modifications and return to Altoona	Additional parts consumed	On-site personnel	Paperwork burden	Testing fees (20%)	FTA program cost
PTI-BY-1214 .....	Structural durability.	Unknown—upper body structure failing.	0	0	Unknown ....	4,374	215	11,152	44,608
PTI-BT-1208 .....	Structural durability.	Unknown—body structure cracks.	0	0	Unknown ....	4,374	215	11,152	44,608
PTI-BT-1110 .....	Structural durability.	Unknown—body to frame interface is cracking. Potentially need a new bus body mount design.	0	0	Unknown ....	4,374	215	17,054	68,216

TABLE H-2—SUMMARY OF THE COSTS FOR RETESTING FAILED BUS MODELS—Continued  
 [Cost of remedying and retesting bus models (2010–2013) that would fail a proposed performance standard (\$)]

Bus (report No.)	Failed test category	Cost of required bus design changes	Lost value of test buses	Shipping of test bus back to manufac- turer for modifi- cations and return to Altoona	Additional parts consumed	On-site personnel	Paperwork burden	Testing fees (20%)	FTA program cost
PTI-BT-1108 .....	Powertrain du- rability.	Unknown—multiple dif- ferent powertrain fail- ure modes need to be remedied.	0	2,034	Unknown ....	.....	710	23,578	94,312
	Maintainability	If powertrain durability failures are corrected this standard would be met as well.	0	0	Unknown ....	.....	0	0	0
PTI-BT-1108 .....	Performance ...	Unknown—the max- imum propulsion power delivered to the wheels needs to be increased.	0	0	Unknown ....	.....	0	600	2,400
PTI-BT-1009 .....	Powertrain du- rability.	Unknown—multiple dif- ferent powertrain fail- ure modes need to be remedied.	0	0	Unknown ....	2,187	215	11,152	44,608
PTI-BT-1107 .....	Structural du- rability.	\$130—radius rod mount was re-weld- ed to correct manu- facturing defect.	0	0	.....	.....	42	0	0
	Powertrain du- rability.	Unknown—multiple dif- ferent powertrain fail- ure modes need to be remedied. Trans- mission cradle was the primary issue.	0	4,592	Unknown ....	.....	380	23,578	94,312
PTI-BT-1107 .....	Performance ...	Unknown—the max- imum propulsion power delivered to the wheels needs to be increased.	0	.....	Unknown ....	.....	42	600	2,400
	Safety-braking	Additional test trials needed to achieve greater brake lining contact with brake rotors.	0	0	0 .....	0	0	620	2,480
	Maintainability	0—if the powertrain du- rability failures are corrected this stand- ard would be met as well.	0	0	Unknown ....	.....	0	0	0
PTI-BT-1006 .....	Interior Noise ..	\$211—this trolley bus exceeded the pro- posed interior noise standard by 4 dB at the driver's seating position. Commer- cially available sound dampening material applied to the floor and engine cover area would reduce the average noise level by 5 dBs 20 square feet of this material costs \$170.00 retail and a two hours of me- chanic labor (2 — 20.35 = 40.70) to in- stall.	0	0	0 .....	0	133	300	1200

**TABLE H-2—SUMMARY OF THE COSTS FOR RETESTING FAILED BUS MODELS—Continued**  
 [Cost of remedying and retesting bus models (2010–2013) that would fail a proposed performance standard (\$)]

Bus (report No.)	Failed test category	Cost of required bus design changes	Lost value of test buses	Shipping of test bus back to manufac- turer for modifica- tions and return to Altoona	Additional parts consumed	On-site personnel	Paperwork burden	Testing fees (20%)	FTA program cost
PTI-BT-1010 .....	Interior Noise ..	\$211—this trolley bus exceeded the proposed interior noise standard by 4 dB at the driver's seating position. Commercially available sound dampening material applied to the floor and engine cover area would reduce the average noise level by 5 dBs 20 square feet of this material costs \$170.00 retail and a two hours of mechanic labor (2 – 20.35 = 40.70) to install.	0	0	0 .....	0	133	300	1200
	Total Cost (\$)	Unknown .....	0	6,626	0 .....	15,309	2,300	100,086	400,344
	Annual Cost (\$)	Unknown .....	0	2,209	0 .....	5,103	767	33,362	133,448

In addition, the testing fees for the program are broken down by test and sub-test categories, with manufacturers

charged fees only for the tests that must be conducted. The fee schedule for the

current program is shown in Table H-3.

**TABLE H-3—ADJUSTED BUS TESTING PROGRAM COSTS AND FEES**

Test	500,000 mi— 12 year service life	350,000 mi— 10 year service life	200,000 mi — 7 year service life	150,000 mi — 5 year service life	100,000 mi — 4 year service life
Check-In .....	3,000	3,000	3,000	3,000	3,000
Inspect for Accessibility .....	1,500	1,500	1,500	1,500	1,500
Maintainability (scheduled and unscheduled) .....	Included in the durability test cost				
Selected Maintainability .....	4,500	4,500	4,500	4,500	4,500
Reliability .....	Included in the durability test cost				
Safety .....	3,000	3,000	3,000	3,000	3,000
Performance .....	6,000	6,000	6,000	6,000	6,000
Brake .....	6,100	6,100	6,100	6,100	6,100
Distortion .....	3,000	3,000	3,000	3,000	3,000
Static Towing .....	1,500	1,500	1,500	1,500	1,500
Dynamic Towing .....	1,500	1,500	1,500	1,500	1,500
Jacking .....	1,500	1,500	1,500	1,500	1,500
Hoisting .....	1,500	1,500	1,500	1,500	1,500
Structural Durability .....	117,890	85,270	55,760	40,060	25,970
Fuel Economy .....	6,000	6,000	6,000	6,000	6,000
Interior Noise .....	1,500	1,500	1,500	1,500	1,500
Exterior Noise .....	1,500	1,500	1,500	1,500	1,500
Emissions .....	44,000	44,000	44,000	44,000	44,000
Total for Full Testing (100%) .....	203,990	171,370	141,860	77,660	60,570
Manufacturer's Portion Fee (20%) .....	40,798	34,274	28,372	15,532	12,114

The results from this analysis indicate that annual costs would increase in several areas. The impact of the

performance standards to the FTA program cost is estimated to be \$133,448. A total of \$33,362 in

additional manufacturer's fees would be collected from the additional tests. An additional paperwork burden of \$767

would be incurred from the required failure analysis and remedy proposal process. An additional \$5,103 would be expended for on-site personnel expenses incurred performing test bus modifications at the test site. An unknown amount of additional parts and components would be consumed during the retesting. FTA estimates that one of the eight failed buses would be returned to the manufacturer for systemic modifications incurring additional round-trip shipping expenses of \$2,034. FTA believes that the retesting process will not depreciate the test bus an additional amount beyond the first test. However, FTA believes there are no additional costs to the

program from implementing the Bus Model Scoring System, as the scores will be calculated automatically once the test results are finalized.

FTA also analyzed the costs of the discretionary program changes in the final rule. The rule will modify two test procedures (payloading and emissions test payload) but will not impose any completely new testing procedures, and will eliminate the On-Road Fuel Economy Test procedure, thereby reducing the aggregate costs currently associated with the bus testing program. For the revised bus payloading procedures, FTA estimates an annual decrease in the program cost of \$294 and a decrease in testing fees of \$74. These are a result of labor cost savings

from loading the mid-sized buses with fewer or no simulated standee passengers. FTA estimates an increase in the annual paperwork burden of \$1,488 from the increased manufacturer labor required to determine and report to FTA the total passenger capacity of new bus models submitted to the program. The only other cost introduced by the revised bus payloading procedures is the requirement to add a placard on the interior bulkhead of the bus identifying the maximum standee passenger rating in 2 inch or taller letters. FTA estimates the annual cost impact to new bus models is \$58,038. This cost analysis is presented in Table H-3.

TABLE H-4—COST OF STANDEE PASSENGER RATING PLACARD (\$)

Standee Rating Placard	Estimated cost per decal (using a quantity of 500)	Labor rate (hr)	Labor amount to install (hr)	Estimated cost per bus	Total annual cost
Annual cost for new production transit buses (5600 units a year) .....	8.99	13.74	0.10	10.36	58,038

(Source: [www.edecals.com](http://www.edecals.com) using a 2.5 inch tall lettering stating "XX Standees Maximum"). Labor rate assumes a category of "assembler and fabricator" from [bls.gov](http://bls.gov).

The annual cost savings of eliminating the on-road fuel economy test is \$64,000 for the FTA program and \$16,000 in manufacturer test fees. FTA estimates that 15 on-road fuel economy tests would be eliminated annually and the cost of the dynamometer based fuel economy test is already captured in the cost for the emissions test. One full electric bus is expected to be tested annually. Although electric bus models do not need to undergo emissions

testing, the cost for conducting one electric bus fuel economy test was retained.

FTA is also changing the bus passenger load for the emissions test from 2/3 seated load weight to full seated load weight. FTA estimates a cost reduction of \$470 for the FTA program portion and \$118 in reduced fees to the manufacturers. The cost savings is derived from eliminating the labor of unloading and reloading 1/3 of the

seated passenger load as all of the other non-durability performance tests are conducted at full seated load.

The program entrance requirements are expected to increase the annual FTA program costs by \$2,654 and require \$664 in additional manufacturer costs. The additional costs are a result of the bus configuration inspections conducted at bus check-in. The details of this cost analysis are outlined in Table H-5.

TABLE H-5—BUS CONFIGURATION INSPECTION COST

Labor category	Hourly rate	Source	Total hours per bus	Cost
Diesel auto service tech .....	20.35	<i>bls.gov</i>	4	81.40
Technical writer .....	31.49	<i>bls.gov</i>	4	125.96
			Cost per bus	207.36
			Total annual cost (16 buses)	\$3,318

The revisions to the test scheduling process are expected to increase the annual paperwork burden to bus manufacturers by \$1,322. The test entrance requirements review milestone is not expected to add any costs to the program as only FTA will be reviewing the results of the check-in process and determining the outcome of the milestone review.

Lastly, the annual cost of the penalty for unauthorized maintenance and modification is estimated to be \$800 for the FTA program cost portion and \$200 in fees to the manufacturers. The costs

were determined by amortizing the cost of test track upgrades for physical security and surveillance over a 10-year period.

The total annual cost of the Bus Test Program is estimated to be \$5,650,515 given the changes made under this rule. The current Bus Test Program incurs annual costs of \$5,494,146. The incremental cost of the rule is anticipated to be \$159,369 per year for the new bus models.

#### Benefits

A summary of the estimated annual benefits of the Bus testing program is

presented in Table H-6. FTA has identified and analyzed seven categories of program benefits:

1. *Greater probability of meeting service life and reduced unscheduled maintenance:* This category estimates the annual benefits achieved by adopting these procedures will improve the likelihood that new model bus models entering revenue service will satisfy their service life requirement and the benefits obtained through a reduction of unscheduled maintenance

in actual service. While FTA provides a potential estimate of this benefit, FTA does not include it in its quantitative analysis, but notes that this will most likely be a cost reduction (qualitative benefit) to the industry.

2. *Reduced safety risk*: This category estimates the annual benefits that reduce the safety risk of new bus models entering transit service.

3. *Improved recipient awareness and accuracy of total bus passenger capacity*: This category of benefits examines the benefits obtained from determining and communicating the rated standee passenger capacity of a bus to recipients to inform their procurement process and their bus operations.

4. *Improved recipient knowledge of a bus model production configuration*: This category improves the knowledge of the tested bus model configuration and any deviations from the original planned configuration herein.

5. *Increased confidence the delivered production buses will perform the same as the test bus*: This category examines the benefits of the proposals in increasing the understanding and confidence that the bus model a recipient procures and is delivered, and matches the bus tested with respect to its design configuration and major components.

6. *Faster comprehension of test results/scores and motivation for improved bus performance*: This category examines the benefits derived from the proposals to increase the speed and depth of comprehension of the bus testing results.

7. *Simplified test scheduling process and elimination of unnecessary testing*: This category examines the benefits of maintaining one point and process of program entry and the benefits of eliminating unnecessary testing.

FTA was unable to provide monetized benefits for many of the benefit

categories. For many of the categories where FTA believes there are benefits but was unable to quantify, the result is identified as “unknown”. For categories where FTA believes there is no benefit, the result was identified as “0”. The benefits of a greater probability of bus models meeting their service life was quantified, but only to inform FTA’s qualitative assumptions.

Overall, FTA believes that the current program provides potential benefits in all of the seven categories identified when the information generated by the program is used in the procurement decision process. FTA did not receive comments to the docket challenging or questioning these benefits, but FTA believes that adopting these minimum performance standards will reduce safety risks, reduce unscheduled maintenance, and ensure a greater probability of a bus model meeting its expected service life.

TABLE H-6—SUMMARY OF THE ESTIMATED ANNUAL BENEFITS FOR ALL PROPOSALS

Item	Greater probability of meeting service life and reduced unscheduled maintenance	Reduced safety risk	Grantee awareness and accuracy of total bus passenger capacity	Improved grantee Knowledge of Buy America and bus testing production configuration	Increased confidence the delivered production buses will perform the same as the test bus	Faster comprehension of test scores and motivation for improved bus performance	Simplified test scheduling and process & elimination of unnecessary testing
Baseline—Current Program .....	Unknown .....	Unknown .....	Unknown .....	Unknown .....	Unknown .....	Unknown .....	Unknown.
Proposed MAP—21 Minimum Performance Standards.	Cost reduction	Unknown .....	0 .....	0 .....	0 .....	0 .....	0.
Proposed Scoring System .....	Unknown .....	Unknown .....	0 .....	0 .....	0 .....	Unknown .....	0.
Proposed Discretionary Program Changes.	.....	.....	.....	.....	.....	.....	.....
Revised Bus Payloading Procedures	Unknown .....	Unknown .....	Unknown .....	0 .....	0 .....	0 .....	0.
Elimination of On-Road Fuel Economy Test.	0 .....	0 .....	0 .....	0 .....	Unknown .....	0 .....	Cost reduction.
Revised Bus Passenger Load for Emissions Testing.	0 .....	0 .....	0 .....	0 .....	0 .....	0 .....	Cost reduction.
Bus Testing Entrance Requirement ..	0 .....	Unknown .....	Unknown .....	Unknown .....	Unknown .....	0 .....	Unknown.
Revisions to the Scheduling of Testing Requirements.	0 .....	0 .....	0 .....	0 .....	0 .....	0 .....	Unknown.
Test Requirements Review Milestone	0 .....	0 .....	0 .....	0 .....	0 .....	0 .....	Unknown.
Penalty for Unauthorized Maintenance and Modification.	Unknown .....	Unknown .....	Unknown .....	Unknown .....	Unknown .....	Unknown .....	0.
Estimated Program Benefit (Baseline and all Proposals).	Cost Reduction	Unknown .....	Unknown .....	Unknown .....	Unknown .....	Unknown .....	Cost reduction.

TABLE H-7—BENEFITS ACHIEVED FROM THE MINIMUM PERFORMANCE STANDARDS  
[Projected benefit from the service life loss prevention resulting from the proposed durability requirements]

Bus Size	Service life category (yrs)	# of units sold in 2013 <sup>1</sup>	# of models tested 2010–2012	# of tested models that failed durability (structural or powertrain)	Estimated quantity of buses sold in 2013 that have failed the proposed durability standard	Average new bus value <sup>2</sup> (\$)	Estimated annual service life value loss (assumes bus retirement at 50% life) (\$)	Total cost of new transit buses procured in 2013
> 55 foot articulated.	12	172	2	0	0	760,766	0	130,851,752
45 foot .....	12	18	2	0	0	449,712	0	8,094,816
40 foot .....	12	1906	10	1	38	439,954	8,385,523	838,552,324
35 foot .....	12	373	2	1	37	286,972	5,352,028	107,040,556
30 foot .....	10	283	4	1	14	207,528	1,468,261	58,730,424
< 27 foot .....	4, 5, 7	2892	29	3	60	62,410	1,867,135	180,489,720
Total .....	.....	5644	49	6	149	.....	17,072,947	1,323,759,592

<sup>1</sup> Table 9A, FY2013: [http://www.fta.dot.gov/about\\_FTA\\_16073.html](http://www.fta.dot.gov/about_FTA_16073.html).

<sup>2</sup> See APTA Public Transportation Vehicle Database. <http://www.apta.com/resources/statistics/Pages/OtherAPTASStatistics.aspx>.

FTA is not able to provide a monetized value for the safety risk reduction. Further, FTA estimated benefits of bus models meeting their service life requirements, but FTA used this to inform FTA's qualitative assumption that there would be aggregate benefits to the industry. FTA did not include this in FTA's quantitative calculations because FTA was uncertain of the potential aggregate savings on a year-to-year basis into the future as the industry adapts to today's rulemaking. The results of this analysis are presented in Table H-7.

The analysis presented in Table H-7 used the 2013 transit bus procurement data outlined in Table 9A in the FY 2013 FTA statistical summaries by bus size category and quantity. This analysis also estimated the average cost of a bus model in each size category using the cost information in Table 9A. FTA then determined the quantity of bus models tested in each of the size categories from 2010–2012 (49 buses total) and the number of those that failed the proposed durability performance standard (6). FTA estimated the quantity of bus models sold in 2013 that would have been restricted from FTA recipients in

each bus size category. This estimate assumes that 20 percent of the bus models sold in 2013 were bus models tested between 2010 and 2012. The other 80 percent of the sales were assumed to consist of existing bus models tested prior to 2010. FTA then estimated the projected quantity of failing buses by applying a ratio of the number of tested buses that would fail the proposed durability standard by the number of bus models tested in that size category to 20 percent of the 2013 bus sales figures. This resulting quantity of buses was multiplied by the average monetary value of that bus size category and divided by two to obtain the average amount of service life value lost assuming that each of the failed buses only satisfied 50 percent of their service life requirement. FTA notes that this analysis assumes that all six models were not modified by the manufacturer prior to procurement, as the agency has no information concerning whether or not any modifications did in fact occur. If modifications did occur, then the potential benefits discussed here may be overstated.

FTA notes here that although FTA conducted this analysis, FTA did not

include these values in its quantitative calculation of benefits. FTA conducted this analysis to inform FTA's qualitative assumption of potential benefits. FTA found, as shown above in Table H-6, that the potential for a major cost reduction for the industry is great, but FTA is uncertain of the potential aggregate savings on a year-to-year basis into the future as the industry adapts to the new requirements.

As another baseline, the lost service life value of two tested bus models known to have failed in service but outside the study window from 2010–2012 was also estimated. The results of this analysis are presented in Table H-8. Again, while FTA performed this analysis, FTA did not include these values in FTA's quantitative calculation of benefits. FTA used this analysis to inform FTA's qualitative assumption of potential benefits. FTA found again, as shown in Table H-8, that the potential for a major cost reduction for the industry is great, but FTA is uncertain of the potential aggregate savings on a year-to-year basis into the future as the industry adapts to the new requirements.

**TABLE H-8—ESTIMATED SERVICE LIFE VALUE LOSS OF TWO FAILED BUS MODELS**

[Estimated benefits from service life loss prevention of proposed durability requirements with known bus models that failed in service from 2003 to 2013]

Bus size	Quantity	Initial bus value (\$)	Estimated annual service life value loss (assumes bus retirement at 50% life) (\$)
60 foot articulated .....	226	451,328	51,000,064
23 foot hybrid electric .....	70	150,000	5,250,000
Total Service Value Loss .....			56,250,064
Estimated Annual Loss over 2003–2013 .....			5,625,006

FTA, though, was able to quantify benefits provided by the durability performance standards in the form of reduced unscheduled maintenance, which FTA estimates to be \$531,990 per year. FTA was only able to estimate the

reduction in labor costs and not the associated reduction in the costs of replacement components. The basis for the reduction in labor costs was the estimated reduction in unscheduled maintenance hours after the design

remedies for structural and powertrain durability were applied to the failing bus models identified in the study group. The results of this analysis are presented in Table H-9.

**TABLE H-9—BENEFITS FROM REDUCED UNSCHEDULED MAINTENANCE**

[Benefit derived from reduced bus maintenance requirements as a result of proposed durability standards]

Bus size	Service Life Category (yrs)	# of tested models that failed durability (structural or powertrain)	Average unscheduled maintenance hours per bus eliminated by durability standard during test (25% service life)	Average unscheduled maintenance hours per bus avoided over 50% service life (until early retirement)	Estimated quantity of buses sold in 2013 that have failed the proposed durability standard	Benefit from the reduction in maintenance hours @ 20.35/hr (diesel service technician) (\$)	Benefit from the reduction in the amount of components replaced
>55 foot articulated .....	12	0	0	0	0	0	unknown.



TABLE H-9—BENEFITS FROM REDUCED UNSCHEDULED MAINTENANCE—Continued  
[Benefit derived from reduced bus maintenance requirements as a result of proposed durability standards]

Bus size	Service Life Category (yrs)	# of tested models that failed durability (structural or powertrain)	Average unscheduled maintenance hours per bus eliminated by durability standard during test (25% service life)	Average unscheduled maintenance hours per bus avoided over 50% service life (until early retirement)	Estimated quantity of buses sold in 2013 that have failed the proposed durability standard	Benefit from the reduction in maintenance hours @ 20.35/hr (diesel service technician) (\$)	Benefit from the reduction in the amount of components replaced
45 foot .....	12	0	0	0	0	0	unknown.
40 foot .....	12	1	103	206	38	159,300	unknown.
35 ft .....	12	1	113	226	37	170,167	unknown.
30 ft .....	10	1	4	8	14	2,279	unknown.
<27 foot .....	4, 5, 7	3	82	164	60	200,244	unknown.
Total .....	.....	6	.....	.....	149	531,990	.....

FTA believes the scoring system will provide benefits in the areas of reduced unscheduled maintenance, reduced safety risk, with the faster comprehension of test results, and provide industry motivation to seek bus models with higher test scores.

FTA is confident the revisions to the bus pay loading procedures that require the posting of the maximum rated standee passenger load on the interior bus bulkhead will provide benefits in the areas of greater probability of a bus meeting its service life requirements, reduced amounts of unscheduled maintenance, reduced safety risk, and greater understanding of the total rated bus passenger capacity.

FTA believes that eliminating the current on-road fuel economy test and only publishing the fuel economy test results from the dynamometer based test will provide recipients more realistic and reliable test results than the current on-road fuel economy test. Having only one set of fuel economy test results will also eliminate the potential confusion to recipients and manufacturers with respect to the scoring of the test results. FTA was unable to quantify the benefits, beyond the program cost reduction, of eliminating the on-road fuel economy test.

Regarding the revision to the bus passenger load for the emissions testing

to seated load weight instead of the 2/3 seated load weight that was unique in the emission test, the benefit of this change is a minor cost reduction from the reduced labor of unloading and loading 1/3 of the seated load weight just for this test. FTA does not expect any other benefits from this approach.

The entrance requirements are expected to provide benefits with reduced safety risk, greater awareness and accuracy of the bus passenger capacity, greater understanding of Buy America implications on bus configurations with respect to major components, and prevention of unnecessary retesting due to bus production configuration anomalies discovered during or after the test is completed.

The primary benefit of the revisions to the scheduling of testing requirements is that the process will be the same whether it is a request for full testing or partial testing. By establishing a single point of entry for the program there will be less confusion about the program requirements and the process and consistency in the resulting determinations.

The benefit of the test requirements review milestone is a program event that will deliver the benefits of the bus entrance requirements. This milestone will provide all testing stakeholders

(manufacturer, Bus Testing Facility operator, FTA, and potential purchasers) a clear understanding of a new bus model's program eligibility and readiness for testing.

The penalty for unauthorized maintenance and modification is the repeat of all potentially affected tests. This rule provides benefits in all the categories identified except with the "simplified test scheduling and elimination of unnecessary testing" category.

#### Summary of Costs and Benefits for Bus Model Testing

The annual incremental cost of the rule is \$159,369 and the quantified annual benefit of future bus tests is expected to be \$531,990, giving an annual net benefit of \$372,621. The costs and benefits of the rule are expected to be the same each year into the future.

#### Summary of Overall Costs and Benefits

Using a 3 and 7 percent discount rate over a ten-year analysis period for the annual costs and benefits developed above, the Net Present Value of the changes encompassed within this rule would yield a net benefit of \$3,178,533 at 3 percent discount rate and \$2,617,134 at 7 percent discount rate, as shown in Table H-14.

TABLE H-10—SUMMARY OF QUANTIFIED COSTS AND BENEFITS

Year	Costs	Benefits	Net Cash Flow	Discounted Net Benefits @	
				3%	7%
1 .....	\$159,369	\$531,990	\$372,621	\$361,768	\$348,244
2 .....	159,369	531,990	372,621	351,231	325,462
3 .....	159,369	531,990	372,621	341,001	304,170
4 .....	159,369	531,990	372,621	331,069	284,271
5 .....	159,369	531,990	372,621	321,426	265,674
6 .....	159,369	531,990	372,621	312,064	248,293
7 .....	159,369	531,990	372,621	302,975	232,050
8 .....	159,369	531,990	372,621	294,150	216,869

TABLE H-10—SUMMARY OF QUANTIFIED COSTS AND BENEFITS—Continued

Year	Costs	Benefits	Net Cash Flow	Discounted Net Benefits @	
				3%	7%
9 .....	159,369	531,990	372,621	285,583	202,681
10 .....	159,369	531,990	372,621	277,265	189,422
Net Present Value .....	.....	.....	.....	3,178,533	2,617,134

**Executive Order 13132 (Federalism)**

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This rule does not include any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

**Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)**

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 and because this rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

**Executive Order 13272 (Intergovernmental Review)**

The regulations implementing Executive Order 13272 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and proposals to assess their impact on small businesses and other small entities to determine whether the rule or proposal will have a significant economic impact on a substantial number of small entities. Although the testing requirement imposes compliance costs on the regulated industry, including bus manufacturers who meet the definition of “small businesses,” Congress has authorized FTA to pay 80% of the bus manufacturer’s testing fee, defraying the direct financial impact on these entities. FTA has estimated the additional costs and the projected benefits of this rule and certifies that this rule would not have a significant economic impact on a substantial number of small entities.

**Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*) requires agencies to evaluate whether an agency action would result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$155 million or more (as adjusted for inflation) in any one year, and if so, to take steps to minimize these unfunded mandates. FTA does not believe the rulemaking would result in expenditures exceeding this level.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB before conducting or sponsoring a collection of information as defined by the PRA. Because today’s regulation contains a new provision that would require manufacturers to provide technical specifications regarding their vehicles to FTA in order to receive approval to proceed with testing, FTA submitted a revised information collection estimate to OMB and invited comment on the information collection burden estimate published in the NPRM.

**Regulation Identifier Number (RIN)**

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

**National Environmental Policy Act**

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. FTA has determined that this rulemaking is categorically excluded pursuant to 23 CFR 771.118(c)(4).

**Privacy Act**

Anyone is able to search the electronic form for all comments received into any of FTA’s dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit [www.regulations.gov](http://www.regulations.gov).

**Executive Order 12898 (Environmental Justice)**

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” and DOT Order 5610.2(a), “Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (see, [www.fhwa.dot.gov/environment/environmental\\_justice/ej\\_at\\_dot/order\\_56102a/index.cfm](http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cfm)), require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. To meet this goal, FTA has issued additional final guidance in the form of a circular (Circular 4703.1, “*FTA Policy Guidance for Federal Transit Recipients*,” July 17, 2012; [http://www.fta.dot.gov/legislation\\_law/12349\\_14740.html](http://www.fta.dot.gov/legislation_law/12349_14740.html)), to implement Executive Order 12898 and DOT Order 5610.2(a).

FTA evaluated this rule under the Executive Order, the DOT Order, and the FTA Circular. Environmental justice principles, in the context of establishing a quantitative scoring system for public transit vehicles, fall outside the scope of applicability.

Nothing inherent in today's regulation would disproportionately impact minority or low income populations, as the primary parties affected by this rule are those transit vehicle manufacturers who would be subject to the bus testing procedures and the new quantitative scoring system. FTA has determined that the regulation would not cause disproportionately high and adverse human health and environmental effects on minority or low income populations.

#### List of Subjects in 49 CFR Part 665

Buses, Grant programs—  
transportation, Public transportation,  
Motor vehicle safety, Reporting and  
recordkeeping requirements.

For the reasons stated in the preamble, the Federal Transit Administration revises 49 CFR Part 665 as set forth below:

### Title 49—Transportation

## PART 665—BUS TESTING

### Subpart A—General

Sec.

- 665.1 Purpose.
- 665.3 Scope.
- 665.5 Definitions.
- 665.7 Certification of compliance.

### Subpart B—Bus Testing Procedures

- 665.11 Testing requirements.
- 665.13 Test report and manufacturer certification.

### Subpart C—Operations

- 665.21 Scheduling.
  - 665.23 Fees.
  - 665.25 Transportation of vehicle.
  - 665.27 Procedures during testing.
- Appendix A to Part 665—Bus Model Scoring System and Pass/Fail Standard

**Authority:** 49 U.S.C. 5318 and 49 CFR 1.91.

### Subpart A—General

#### § 665.1 Purpose.

An applicant for Federal financial assistance for the purchase or lease of buses with funds obligated by the FTA shall certify to the FTA that any new bus model acquired with such assistance has been tested and has received a passing test score in accordance with this part. This part contains the information necessary for a recipient to ensure compliance with this provision.

#### § 665.3 Scope.

This part shall apply to an entity receiving Federal financial assistance under 49 U.S.C. Chapter 53.

#### § 665.5 Definitions.

As used in this part—

*Administrator* means the Administrator of the Federal Transit Administration or the Administrator's designee.

*Automotive* means that the bus is not continuously dependent on external power or guidance for normal operation. Intermittent use of external power shall not automatically exclude a bus of its automotive character or the testing requirement.

*Bus* means a rubber-tired automotive vehicle used for the provision of public transportation service by or for a recipient of FTA financial assistance.

*Bus model* means a bus design or variation of a bus design usually designated by the manufacturer by a specific name and/or model number.

*Bus Testing Facility* means the facility used by the entity selected by FTA to conduct the bus testing program, including test track facilities operated in connection with the program.

*Bus Testing Report* means the complete test report for a bus model, documenting the results of performing the complete set of bus tests on a bus model.

*Curb weight* means the weight of the bus including maximum fuel, oil, and coolant; but without passengers or driver.

*Emissions* means the components of the engine tailpipe exhaust that are regulated by the United States Environmental Protection Agency (EPA), plus carbon dioxide (CO<sub>2</sub>) and methane (CH<sub>4</sub>).

*Emissions control system* means the components on a bus whose primary purpose is to minimize regulated emissions before they exit the tailpipe. This definition does not include components that contribute to low emissions as a side effect of the manner in which they perform their primary function (e.g., fuel injectors or combustion chambers).

*Final acceptance* means the formal approval by the recipient that the vehicle has met all of its bid specifications and the recipient has received proper title.

*Gross weight* (Gross Vehicle Weight, or GVW) means the seated load weight of the bus plus 150 pounds of ballast for each standee passenger, up to and including, the maximum rated standee passenger capacity identified on the bus interior bulkhead.

*Hybrid* means a propulsion system that combines two power sources, at least one of which is capable of capturing, storing, and re-using energy.

*Major change in chassis design* means, for vehicles manufactured on a third-party chassis, a change in frame

structure, material or configuration, or a change in chassis suspension type.

*Major change in components* means:

(1) For those vehicles that are not manufactured on a third-party chassis, a change in a vehicle's engine, axle, transmission, suspension, or steering components;

(2) For those that are manufactured on a third-party chassis, a change in the vehicle's chassis from one major design to another.

*Major change in configuration* means a change that is expected to have a significant impact on vehicle handling and stability or structural integrity.

*Modified third-party chassis or van* means a vehicle that is manufactured from an incomplete, partially assembled third-party chassis or van as provided by an OEM to a small bus manufacturer. This includes vehicles whose chassis structure has been modified to include: A tandem or tag axle; a drop or lowered floor; changes to the GVWR from the OEM rating; or other modifications that are not made in strict conformance with the OEM's modifications guidelines where they exist.

*New bus model* means a bus model that—

(1) Has not been used in public transportation service in the United States before October 1, 1988; or

(2) Has been used in such service but which after September 30, 1988, is being produced with a major change in configuration or a major change in components.

*Operator* means the operator of the Bus Testing Facility.

*Original equipment manufacturer (OEM)* means the original manufacturer of a chassis or van supplied as a complete or incomplete vehicle to a bus manufacturer.

*Parking brake* means a system that prevents the bus from moving when parked by preventing the wheels from rotating.

*Partial testing* means the performance of only that subset of the complete set of bus tests in which significantly different data would reasonably be expected compared to the data obtained in previous full testing of the baseline bus model at the Bus Testing Facility.

*Partial testing report*, also *partial test report*, means a report documenting, for a previously-tested bus model that is produced with major changes, the results of performing only that subset of the complete set of bus tests in which significantly different data would reasonably be expected as a result of the changes made to the bus from the configuration documented in the original full Bus Testing Report. A partial testing report is not valid unless

accompanied by the corresponding full Bus Testing Report for the corresponding baseline bus configuration.

*Public transportation service* means the operation of a vehicle that provides general or special service to the public on a regular and continuing basis consistent with 49 U.S.C. Chapter 53.

*Recipient* means an entity that receives funds under 49 U.S.C. Chapter 53, either directly from FTA or through a direct recipient.

*Regenerative braking system* means a system that decelerates a bus by recovering its kinetic energy for on-board storage and subsequent use.

*Retarder* means a system other than the service brakes that slows a bus by dissipating kinetic energy.

*Seated load weight* means the curb weight of the bus plus the seated passenger load simulated by adding 150 pounds of ballast to each seating position and 600 pounds per wheelchair position.

*Service brake(s)* means the primary system used by the driver during normal operation to reduce the speed of a moving bus and to allow the driver to bring the bus to a controlled stop and hold it there. Service brakes may be supplemented by retarders or by regenerative braking systems.

*Small bus manufacturer* means a secondary market assembler that acquires a chassis or van from an OEM for subsequent modification or assembly and sale as 5-year/150,000-mile or 4-year/100,000-mile minimum service life vehicle.

*Tailpipe emissions* means the exhaust constituents actually emitted to the atmosphere at the exit of the vehicle tailpipe or corresponding system.

*Third party chassis* means a commercially available chassis whose design, manufacturing, and quality control are performed by an entity independent of the bus manufacturer.

*Unmodified mass-produced van* means a van that is mass-produced, complete and fully assembled as provided by an OEM. This shall include vans with raised roofs, and/or wheelchair lifts, or ramps that are installed by the OEM or by a party other than the OEM provided that the installation of these components is completed in strict conformance with the OEM modification guidelines.

*Unmodified third-party chassis* means a third-party chassis that either has not been modified, or has been modified in strict conformance with the OEM's modification guidelines.

#### **§ 665.7 Certification of compliance.**

(a) In each application to FTA for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by the FTA, the recipient shall certify that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required in this part. The recipient shall receive the appropriate full Bus Testing Report and any applicable partial testing report(s) before final acceptance of the first vehicle.

(b) In dealing with a bus manufacturer or dealer, the recipient shall be responsible for determining whether a vehicle to be acquired requires full testing or partial testing or has already satisfied the requirements of this part. A bus manufacturer or recipient may request guidance from FTA.

### **Subpart B—Bus Testing Procedures**

#### **§ 665.11 Testing requirements.**

(a) In order to be tested at the Bus Testing Facility, a new model bus shall—

(1) Be a single model that complies with NHTSA requirements at 49 CFR part 565 *Vehicle Identification Number Requirements*; 49 CFR part 566 *Manufacturer Identification*; 49 CFR part 567 *Certification*; and where applicable, 49 CFR part 568 *Vehicle Manufactured in Two or More Stages—All Incomplete, Intermediate and Final-Stage Manufacturers of Vehicle Manufactured in Two or More Stages*;

(2) Have been produced by an entity whose Disadvantaged Business Enterprise DBE goals have been submitted to FTA pursuant to 49 CFR part 26;

(3) Identify the maximum rated quantity of standee passengers on the interior bulkhead in 2 inch tall or greater characters;

(4) Meet all applicable Federal Motor Vehicle Safety Standards, as defined by the National Highway Traffic Safety Administration in part 571 of this title; and

(5) Be substantially fabricated and assembled using the techniques, tooling, and materials that will be used in production of subsequent buses of that model with the manufacturing point of origin for the bus structure, the axles, the foundation brakes, the propulsion power system and auxiliary power systems (engine, transmission, traction batteries, electric motor(s), fuel cell(s)), and the primary energy storage and delivery systems (fuel tanks, fuel injectors & manifolds, and the fuel injection electronic control unit)

identified in the test request submitted to FTA during the scheduling process.

(b) If the new bus model has not previously been tested at the Bus Testing Facility, then the new bus model shall undergo the full tests requirements for Maintainability, Reliability, Safety, Performance (including Braking Performance), Structural Integrity, Fuel Economy, Noise, and Emissions Tests.

(c) If the new bus model has not previously been tested at the Bus Testing Facility and is being produced on a third-party chassis that has been previously tested on another bus model at the Bus Testing Facility, then the new bus model may undergo partial testing in place of full testing.

(d) If the new bus model has previously been tested at the Bus Testing Facility, but is subsequently manufactured with a major change in chassis or components, then the new bus model may undergo partial testing in place of full testing.

(e) Buses shall be tested according to the service life requirements identified in the prevailing published version of FTA Circular 5010.

(f) Tests performed in a higher service life category (*i.e.*, longer service life) need not be repeated when the same bus model is used in lesser service life applications.

#### **§ 665.13 Test report and manufacturer certification.**

(a) The operator of the Bus Testing Facility shall implement the performance standards and scoring system set forth in this part.

(b) Upon completion of testing, the operator of the facility shall provide the scored test results and the resulting test report to the entity that submitted the bus for testing and to FTA. The test report will be available to recipients only after both the bus manufacturer and FTA have approved it for release. If the bus manufacturer declines to release the report, or if the bus did not achieve a passing test score, the vehicle will be ineligible for FTA financial assistance.

(c)(1) A manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration shall provide a copy of the corresponding full Bus Testing Report and any applicable partial testing report(s) to a recipient during the point in the procurement process specified by the recipient, but in all cases before final acceptance of the first bus by the recipient.

(2) A manufacturer who releases a report under paragraph (c)(1) of this section also shall provide notice to the operator of the facility that the test

results and the test report are to be made available to the public.

(d) If a tested bus model with a Bus Testing Report undergoes a subsequent major change in component or configuration, the manufacturer or dealer shall advise the recipient during the procurement process and shall include a description of the change. Any party may ask FTA for confirmation regarding the scope of the change.

(e) A Bus Testing Report shall be available publicly once the bus manufacturer makes it available during a recipient's procurement process. The operator of the facility shall have copies of all the publicly available reports available for distribution. The operator shall make the final test results from the approved report available electronically and accessible over the internet.

(f) The Bus Testing Report and the test results are the only official information and documentation that shall be made publicly available in connection with any bus model tested at the Bus Testing Facility.

### Subpart C—Operations

#### § 665.21 Scheduling.

(a) All requests for testing, including requests for full, partial, or repeat testing, shall be submitted to the FTA Bus Testing Program Manager for review prior to scheduling with the operator of the Bus Testing Facility. All test requests shall provide: A detailed description of the new bus model to be tested; the service life category of the bus; engineering level documentation characterizing all major changes to the bus model; and documentation that demonstrates satisfaction of each one of the testing requirements outlined in section 665.11(a).

(b) FTA will review the request, determine if the bus model is eligible for testing, and provide an initial response within five (5) business days. FTA will prepare a written response to the requester for use in scheduling the required testing.

(c) To schedule a bus for testing, a manufacturer shall contact the operator of the Bus Testing Facility and provide the FTA response to the test request. Contact information and procedures for scheduling testing are available on the operator's Bus Testing Web site, <http://www.altoonabustest.com>.

(d) Upon contacting the operator, the operator shall provide the manufacturer with the following:

- (1) A draft contract for the testing;
- (2) A fee schedule; and
- (3) The test procedures for the tests that will be conducted on the vehicle.

(e) The operator shall process vehicles FTA has approved for testing in the order in which the contracts are signed.

#### § 665.23 Fees.

(a) The operator shall charge fees in accordance with a schedule approved by FTA, which shall include different fees for partial testing.

(b) Fees shall be prorated for a vehicle withdrawn from the Bus Testing Facility before the completion of testing.

(c) The manufacturer's portion of the test fee shall be used first during the conduct of testing. The operator of the Bus Testing Facility shall obtain approval from FTA prior to continuing testing of each bus model at the Bus testing program's expense after the manufacturer's fee has been expended.

#### § 665.25 Transportation of vehicle.

A manufacturer shall be responsible for transporting its vehicle to and from the Bus Testing Facility at the beginning and completion of the testing at the manufacturer's own risk and expense.

#### § 665.27 Procedures during testing.

(a) Upon receipt of a bus approved for testing the operator of the Bus Testing Facility shall:

- (1) Inspect the bus design configuration and compare it to the configuration documented in the test request;
- (2) Determine if the bus, when loaded to Gross Weight, does not exceed its Gross Vehicle Weight Rating, Gross Axle Weight Ratings, or maximum tire load ratings;
- (3) Determine if the bus is capable of negotiating the durability test track at curb weight, seated load weight, and Gross Vehicle Weight;
- (4) Determine if the bus is capable of performing the Fuel Economy and Emissions Test duty cycles within the established standards for speed deviation.

(b) The operator shall present the results obtained from the activities of 665.27(a) and present them to the bus manufacturer and the FTA Bus Testing Program Manager for review prior to initiating testing using the Bus testing program funds. FTA will provide a written response within five (5) business days to authorize the start of testing or to request clarification for any discrepancies noted from the activities of 665.27(a). Testing can commence after five (5) business days if FTA does not provide a response.

(c) The operator shall perform all maintenance and repairs on the test vehicle, consistent with the manufacturer's specifications, unless the operator determines that the nature

of the maintenance or repair is best performed by the manufacturer under the operator's supervision.

(d) The manufacturer shall be permitted to observe all tests. The manufacturer shall not provide maintenance or service unless requested to do so by the operator.

(e) The operator shall investigate each occurrence of unauthorized maintenance and repairs and determine the potential impact to the validity of the test results. Tests where the results could have been impacted must be repeated at the manufacturer's expense.

(f) The operator shall perform all modifications on the test vehicle, consistent with the manufacturer's specifications, unless the operator determines that the nature of the modification is best performed by the manufacturer under the operator's supervision. All vehicle modifications performed after the test has started will first require review and approval by FTA. If the modification is determined to be a major change, some or all of the tests already completed shall be repeated or extended at FTA's discretion.

(g) The operator shall halt testing after any occurrence of unapproved, unauthorized, or unsupervised test vehicle modifications. Following an occurrence of unapproved or unsupervised test vehicle modifications, the vehicle manufacturer shall submit a new test request to FTA that addresses all the requirements in 665.11 to reenter the Bus testing program.

(h) The operator shall perform eight categories of tests on new bus models. The eight tests and their corresponding performance standards are described in the following paragraphs.

(1) *Maintainability test.* The Maintainability test shall include bus servicing, preventive maintenance, inspection, and repair. It shall also include the removal and reinstallation of the engine and drive-train components that would be expected to require replacement during the bus's normal life cycle. Much of the maintainability data should be obtained during the Bus Durability Test. All servicing, preventive maintenance, and repair actions shall be recorded and reported. These actions shall be performed by test facility staff, although manufacturers shall be allowed to maintain a representative on-site during the testing. Test facility staff may require a manufacturer to provide vehicle servicing or repair under the supervision of the facility staff. Since the operator may not be familiar with the detailed design of all new bus models that are tested, tests to

determine the time and skill required for removing and reinstalling an engine, a transmission, or other major propulsion system components may require advice from the bus manufacturer. All routine and corrective maintenance shall be carried out by the operator in accordance with the manufacturer's specifications.

(i) The Maintainability Test Report shall include the frequency, personnel hours, and replacement parts or supplies required for each action during the test. The accessibility of selected components and other observations that could be important to a bus purchaser shall be included in the report.

(ii) The performance standard for Maintainability is that no greater than 125 hours of total unscheduled maintenance shall be accumulated over the execution of a full test.

(2) *Reliability test.* Reliability shall not be a separate test, but shall be addressed by recording all bus failures and breakdowns during all other testing. The detected bus failures, repair time, and the actions required to return the bus to operation shall be presented in the report. The performance standard for Reliability is that the vehicle under test experience no more than one uncorrected Class 1 failure and two uncorrected Class 2 failures over the execution of a full test. Class 1 failures are addressed in the Safety Test, below. An uncorrected Class 2 failure is a failure mode not addressed by a design or component modification that would cause a transit vehicle to be unable to complete its transit route and require towing or on-route repairs. A failure is considered corrected when a design or component modification is validated through sufficient remaining or additional reliability testing in which the failure does not reoccur.

(3) *Safety test.* The Safety Test shall consist of a Handling and Stability Test, a Braking Performance Test, and a review of the Class 1 reliability failures that occurred during the test. The Handling and Stability Test shall be an obstacle avoidance double-lane change test performed on a smooth and level test track. The lane change course will be set up using pylons to mark off two 12 foot center to center lanes with two 100 foot lane change areas 100 feet apart. Bus speed shall be held constant throughout a given test run. Individual test runs shall be made at increasing speeds up to a specified maximum or until the bus can no longer be operated safely over the course, whichever speed is lower. Both left- and right-hand lane changes shall be tested. The performance standard is that the test vehicle can safely negotiate and remain

within the lane change test course at a speed of no less than 45 mph.

(i) The functionality and performance of the service, regenerative (if applicable), and parking brake systems shall be evaluated at the test track. The test bus shall be subjected to a series of brake stops from specified speeds on high, low, and split-friction surfaces. The parking brake shall be evaluated with the bus parked facing both up and down a steep grade. There are three performance standards for braking. The stopping distance from a speed of 45 mph on a high friction surface shall satisfy the bus stopping distance requirements of FMVSS 105 or 121 as applicable. The bus shall remain within a standard 12-foot lane width during split coefficient brake stops. The parking brake shall hold the test vehicle stationary on a 20 percent grade facing up and down the grade for a period of 5 minutes.

(ii) A review of all the Class 1 failures that occurred during the test shall be conducted as part of the Safety Test. Class 1 failures include those failures that, when they occur, could result in a loss of vehicle control; in serious injury to the driver, passengers, pedestrians, or other motorists; and in property damage or loss due to collision or fire. The performance standard is that at the completion of testing with no uncorrected Class 1 failure modes. A failure is considered corrected when a design or component modification is validated through sufficient remaining or additional Reliability Tests in which the failure does not reoccur over a number of miles equal to or greater than the additional failure up to 100% of the durability test mileage for the service life category of the tested bus.

(4) *Performance test.* The Performance Test shall measure the maximum acceleration, speed, and gradeability capability of the test vehicle. In determining the transit vehicle's maximum acceleration and speed, the bus shall be accelerated at full throttle from rest until it achieves its maximum speed on a level roadway. The performance standard for acceleration is that the maximum time that the test vehicle requires to achieve 30 mph is 18 seconds on a level grade. The gradeability test of the test vehicle shall be calculated based on the data measured on a level grade during the Acceleration Test. The performance standard for the gradeability test is that the test vehicle achieves a sustained speed of at least 40 mph on a 2.5 percent grade and a sustained speed of at least 10 mph on a 10 percent grade.

(5) *Structural integrity tests.* Two complementary Structural Integrity

Tests shall be performed. Structural Strength and Distortion Tests shall be performed at the Bus Testing Center, and the Structural Durability Test shall be performed at the test track.

(i) *Structural strength and distortion tests.* (1) The bus shall be loaded to GVW, with one wheel on top of a curb and then in a pothole. This test shall be repeated for all four wheels. The test verifies:

(i) Normal operation of the steering mechanism and;

(ii) Operability of all passenger doors, passenger escape mechanisms, windows, and service doors. A water leak test shall be conducted in each suspension travel condition. The performance standard shall be that all vehicle passenger exits remain operational throughout the test.

(2) Using a load-equalizing towing sling, a static tension load equal to 1.2 times the curb weight shall be applied to the bus towing fixtures (front and rear). The load shall be removed and the two eyes and adjoining structure inspected for damages or permanent deformations. The performance standard shall be that no permanent deformation is experienced at static loads up to 1.2 times the vehicle curb weight.

(3) The bus shall be towed at CW with a heavy wrecker truck for 5 miles at 20 mph and then inspected for structural damage or permanent deformation. The performance standard shall be that the vehicle is towable with a standard commercial vehicle wrecker without experiencing any permanent damage to the vehicle.

(4) With the bus at CW, probable damages and clearance issues due to tire deflating and hydraulic jacking shall be assessed. The performance standard shall be that the vehicle is capable of being lifted with a standard commercial vehicle hydraulic jack.

(5) With the bus at CW, possible damages or deformation associated with lifting the bus on a two post hoist system or supporting it on jack stands shall be assessed. The performance standard shall be that the vehicle is capable of being supported by jack stands rated for the vehicle's weight.

(i) *Structural durability test.* The Structural Durability Test shall be performed on the durability course at the test track, simulating twenty-five percent of the vehicle's normal service life. The bus structure shall be inspected regularly during the test, and the mileage and identification of any structural anomalies and failures shall be reported in the Reliability Test. There shall be two performance standards for the Durability Test, one to address the

vehicle frame and body structure and one to address the bus propulsion system. The performance standard for the vehicle frame and body structure shall be that there are no uncorrected failure modes of the vehicle frame and body structure at the completion of the full vehicle test. The performance standard for the vehicle propulsion system is that there are no uncorrected powertrain failure modes at the completion of a full test.

(ii) [Reserved]

(6) *Fuel economy test.* The Fuel Economy Test shall be conducted using duty cycles that simulate a diverse range of transit service operating profiles. This test shall measure the fuel economy or fuel consumption of the vehicle and present the results in metrics that minimize the number of unit conversions for mass, volume, and energy.

(i) The Fuel Economy Test shall be designed only to enable FTA recipients to compare the relative fuel economy of buses operating at a consistent loading condition on the same set of typical transit driving cycles. The results of this test are not directly comparable to fuel economy estimates by other agencies, such as the National Highway Traffic Safety Administration (NHTSA) or U.S. Environmental Protection Agency (EPA) or for other purposes.

(ii) The performance standard for fuel economy shall be the prevailing model year fuel consumption standards for heavy-duty vocational vehicles outlined in the NHTSA's Medium and Heavy-Duty Fuel Efficiency Program (49 CFR part 535).

(7) *Noise test.* The Noise Test shall measure interior noise and vibration

while the bus is idling (or in a comparable operating mode) and driving over smooth and irregular road surfaces, and also shall measure the transmission of exterior noise to the interior while the bus is not running. The exterior noise shall be measured as the bus is operated past a stationary measurement instrument. There shall be two minimum noise performance standards: One to address the maximum interior noise during vehicle acceleration from a stop, and one to address the maximum exterior noise during vehicle acceleration from a stop. The performance standard for interior noise while the vehicle accelerates from 0–35 mph shall be no greater than 80 decibels A-weighted. The performance standard for exterior noise while the vehicle accelerates from 0–35 miles per hour shall be no greater than 83 decibels A-weighted.

(8) *Emissions test.* The Emissions Test shall measure tailpipe emissions of those exhaust constituents regulated by the United States EPA for transit bus emissions, plus carbon dioxide (CO<sub>2</sub>) and methane (CH<sub>4</sub>), as the bus is operated over specific repeatable transit vehicle driving cycles. The Emissions test shall be conducted using an emission testing laboratory equipped with a chassis dynamometer capable of both absorbing and applying power.

(i) The Emissions Test is not a certification test, and is designed only to enable FTA recipients to relatively compare the emissions of buses operating on the same set of typical transit driving cycles. The results of this test are not directly comparable to emissions measurements reported to

other agencies, such as the EPA, or for other purposes.

(ii) The emissions performance standard shall be the prevailing EPA emissions requirements for heavy-duty vehicles outlined in 40 CFR part 86 and 40 CFR part 1037.

## **Appendix A to Part 665—Bus Model Scoring System and the Pass/Fail Standard**

### **1. Bus Model Scoring System**

The Bus Model Scoring System shall be used to score the test results using the performance standards in each category. A bus model that fails to meet a minimum performance standard shall be deemed to have failed the test and will not receive an aggregate score. For buses that have passed all the minimum performance standards, an aggregate score shall be generated and presented in each Bus Testing Report. A bus model that just satisfies the minimum baseline performance standard and does not exceed any of the standards shall receive a score of 60. The maximum score a bus model shall receive is 100. The minimum and maximum points available in each test category shall be as shown below in Table A. The Bus Testing report will include a scoring summary table that displays the resulting scores in each of the test categories and subcategories. The scoring summary table shall have a disclaimer footnote stating that the use of the scoring system is not mandatory, only that the bus being procured receive a passing score.

### **2. Pass/Fail Standard**

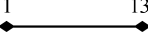






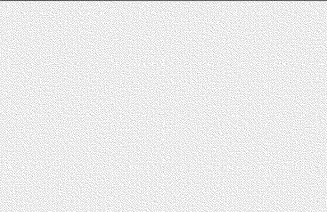

The passing standard shall be a score of 60. Bus models that fail to meet one or more of the minimum baseline performance standards will be ineligible to obtain an aggregate passing score.

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**TABLE A: Performance Standards, Scoring System, and Pass/Fail**

Test Category			Performance Standard	All Performance Standards Met?		
				No	Yes → Assess Score	
					Base Score	+ Prorated Points for Measured Test Performance
Structural Integrity (30 pts.)	Distortion	All exits remain operational under each distortion loading condition	1.0			
	Static Towing	No significant deformation under 120% curb weight load	1.0			
	Dynamic Towing	Bus is towable with standard wrecker	1.0			
	Jacking	Bus is liftable with a standard jack	1.0			
	Hoisting	Bus stable on jacks	1.0			
	Durability	No uncorrected frame & body structure failures remaining at completion of test	13.0			
		No uncorrected powertrain failures remaining at completion of test	12.0			
Safety (20 pts.)	Hazards	No uncorrected Class 1 reliability failures remaining at test completion	10.0			
	Stability	Lane change speed no less than 45 mph	2.5			
	Braking	Stopping distance from 45 mph within 158 feet as per FMVSS 105 & FMVSS 121	0.5	Stopping distance from 45 mph (ft) 158 ————— 80 Points: 0.0 ————— 2.0		
		Bus remains within lane during split coefficient brake stops	2.5			
		Parking brake holds on 20% grade	2.5			
	Maintainability (16 pts.)		Accumulation of no more than 125 hours of unscheduled maintenance	2.0	Hours: 125 ————— 0 Points: 0.0 ————— 14.0	
Reliability (8 pts.)		No more than 2 uncorrected Class 2 failures remaining at completion of test	2.0	Failures: 2 ————— 0 Points: 0.0 ————— 6.0		



<b>Fuel Economy</b> (7 pts.)  (Only 1 fuel type scored)	Liquid Fuels (Diesel, Gasoline, LPG, LNG)	<b>Compliant with 49 CFR part 535 MEDIUM- AND HEAVY-DUTY VEHICLE FUEL EFFICIENCY PROGRAM- Heavy-Duty Vocational Vehicle Fuel Consumption Standards</b>	1.0	MPG: 
	CNG			Points: 0.0 6.0
	Hydrogen			SCF/mi: 
	Electric			Points: 0.0 6.0
<b>Emissions</b> (7 pts.)  (All emissions categories scored)	Carbon Dioxide (CO <sub>2</sub> )	<b>Compliant with all applicable EPA exhaust emissions regulations at date of manufacture including:</b>  <b>40 CFR part 86 CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES</b>  <b>40 CFR part 1037 CONTROL OF EMISSIONS FROM NEW HEAVY-DUTY MOTOR VEHICLES</b>	1.0	Grams/mi: 
	Carbon Monoxide (CO)			Points: 0.0 4.0
	Total Hydrocarbon (THC)			Grams/mi: 
	Non-Methane Hydrocarbon (NMHC)			Points: 0.0 0.4
	Nitrogen Oxides (NOx)			Grams/mi: 
	Particulate Matter (PM)			Points: 0.0 0.4
<b>Noise</b> (7 pts.)	Interior - acceleration 0-35 mph	No greater than 80 decibels (dB(A))	0.5	dB(A): 
	Exterior - acceleration 0-35 mph	No greater than 83 decibels (dB(A))	0.5	dB(A): 
<b>Performance</b> (5 pts.)	Acceleration	Time from 0-30 mph no greater than 18 sec	1.5	
	Gradeability	Sustained speed on 2.5% grade no less than 40 mph	1.5	
		Sustained speed on 10% grade no less than 10 mph	2.0	
<b>Overall Result</b>		FAIL		
		PASS	60 + 0 40	
<b>Maximum Aggregate Score</b>			<b>100</b>	

Carolyn Flowers,

Acting Administrator.

[FR Doc. 2016-17889 Filed 7-29-16; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 224

[Docket No. 150506424-6642-02]

RIN 0648-XD940

#### Endangered and Threatened Wildlife and Plants; Listing Three Angelshark Species as Endangered Under the Endangered Species Act

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** We, NMFS, issue a final rule to list three foreign marine angelshark species under the Endangered Species Act (ESA). We considered comments submitted on the proposed listing rule and have determined that the sawback angelshark (*Squatina aculeata*), smoothback angelshark (*Squatina oculata*), and common angelshark (*Squatina squatina*) warrant listing as endangered species. We will not designate critical habitat for any of these species because the geographical areas occupied by these species are entirely outside U.S. jurisdiction, and we have not identified any unoccupied areas within U.S. jurisdiction that are currently essential to the conservation of any of these species.

**DATES:** This final rule is effective August 31, 2016.

**ADDRESSES:** Chief, Endangered Species Division, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Maggie Miller, NMFS, Office of Protected Resources (OPR), (301) 427-8403.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 15, 2013, we received a petition from WildEarth Guardians to list 81 marine species or subpopulations as threatened or endangered under the ESA. This petition included species from many different taxonomic groups, and we prepared our 90-day findings in batches by taxonomic group. We found that the petitioned actions may be

warranted for 24 of the species and 3 of the subpopulations and announced the initiation of status reviews for each of the 24 species and 3 subpopulations (78 FR 63941, October 25, 2013; 78 FR 66675, November 6, 2013; 78 FR 69376, November 19, 2013; 79 FR 9880, February 21, 2014; and 79 FR 10104, February 24, 2014). On July 14, 2015, we published a proposed rule to list the sawback angelshark (*Squatina aculeata*), smoothback angelshark (*Squatina oculata*), and the common angelshark (*Squatina squatina*) as endangered species (80 FR 40969). We requested public comment on information in the draft status review and proposed rule, and the comment period was open through September 14, 2015. This final rule provides a discussion of the information we received during the public comment period and our final determination on the petition to list the sawback angelshark, smoothback angelshark, and common angelshark under the ESA. The status of the findings and relevant **Federal Register** notices for the other 21 species and 3 subpopulations can be found on our Web site at <http://www.nmfs.noaa.gov/pr/species/petition81.htm>.

##### Listing Species Under the Endangered Species Act

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a “species” under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a “species” to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.”

Section 3 of the ESA defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range” and a threatened species as one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” We interpret an “endangered species” to be one that is presently in danger of extinction. A “threatened species,” on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is

the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any one or a combination of the following five threat factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species’ status and after taking into account efforts being made by any State or foreign nation to protect the species.

In making a listing determination, we first determine whether a petitioned species meets the ESA definition of a “species.” Next, using the best available information gathered during the status review for the species, we complete a status and extinction risk assessment. In assessing extinction risk for these three angelshark species, we considered the demographic viability factors developed by McElhany *et al.* (2000). The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our status reviews, including for Pacific salmonids, Pacific hake, walleye pollock, Pacific cod, Puget Sound rockfishes, Pacific herring, scalloped hammerhead sharks, and black abalone (see <http://www.nmfs.noaa.gov/pr/species/> for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level according to four viable population descriptors: Abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These viable population descriptors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk (NMFS 2015).

We then assess efforts being made to protect the species to determine if these conservation efforts are adequate to mitigate the existing threats. Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into consideration those efforts, if any, being made by any State or foreign nation to protect the species.

## Summary of Comments

In response to our request for comments on the proposed rule, we received information and/or comments from three parties. Two of the commenters presented general information on threats or provided data that were already cited, discussed, and considered in the draft status review report (Miller 2015) or the proposed rule (80 FR 40969; July 14, 2015). Summaries of the substantive public comments received, and our responses, are provided below, with references to our prior documents where relevant.

**Comment 1:** One commenter agreed with the listing determination, citing the evidence provided in the draft status review report (Miller 2015) that the three species are at high risk of extinction due to threats of overutilization and inadequacy of existing regulatory mechanisms.

**Response:** We agree with the commenter.

**Comment 2:** One commenter suggested that instead of a traditional recovery plan for the endangered *Squatina* sharks, the Secretary should contribute resources toward developing the Illegal, Unreported, and Unregulated (IUU) and Seafood Fraud Action Plan under the direction of the Presidential IUU Task Force. The commenter specifically mentioned that traceability regulations are integral for the recovery of these *Squatina* species, and while imports into U.S. markets are likely minimal (because catches are currently so low), limitations on seafood traceability preclude any enforcement of the ESA import provisions. As such, the IUU design principles around traceability are especially relevant to the recovery of these species and the strategy will advance the recovery of these, and other, internationally threatened species.

**Response:** Once a species is listed as threatened or endangered, section 4 of the ESA requires that we develop and implement recovery plans that must, in part, identify objective, measurable criteria which, when met, would result in a determination that the species may be removed from the list. However, we note that the action to develop recovery plans for these *Squatina* species is not part of the determination for listing, which is the subject of this action, and, thus, will not be considered further here. The Presidential Task Force on Combating IUU Fishing and Seafood Fraud and the Action Plan for Implementing the Task Force Recommendations are also beyond the scope of this rulemaking.

**Comment 3:** One commenter remarked on our consideration of the International Union for Conservation of Nature (IUCN) Red List species assessments. Using an example from over 30 years ago, the commenter asserted, noting the IUCN's "vulnerable" extinction risk determination for the Guadalupe fur seal, that we applied the corresponding ESA listing status of "threatened" to this species. Furthermore, the commenter suggested that in addition to our practice of evaluating the source of information the IUCN classification is based upon, in light of the standards on extinction risk and impacts or threats (as discussed in our previous ESA listing findings), we should ensure that we give adequate weight to the opinions of the reasonable scientists who make these threat determinations as well, especially given the fact that they are often preeminent experts on the species being assessed. The commenter stated that the IUCN species assessments, themselves, are each essentially scientific articles quantifying threats to species, should be treated as an additional, independent scientific source, and should be given weight beyond the mere citations that they include.

**Response:** As noted in many of our previous findings (see 81 FR 1376; January 12, 2016, and 81 FR 8874; February 23, 2016, for 2 recent examples), risk classifications by other organizations or made under other Federal or State statutes may be informative, but such classification alone does not provide the rationale for listing determinations (or even preliminary 90-day findings) under the ESA. As mentioned in the 90-day finding for these species (78 FR 69376; November 19, 2013), species classifications under IUCN and the ESA are not equivalent, and data standards, criteria used to evaluate species, and treatment of uncertainty are also not necessarily the same. As the commenter notes, our practice is to evaluate the source of information that the IUCN classification is based upon in light of the standards on extinction risk and impacts or threats discussed above. This was applicable even in the case of the Guadalupe fur seal, although the commenter misrepresents the listing determination basis, implying that we listed the Guadalupe fur seal as "threatened" based on the IUCN's "vulnerable" risk determination. In fact, as noted in the final determination for the Guadalupe fur seal (50 FR 51252; December 16, 1985), the IUCN submitted comments on the proposed

Guadalupe fur seal listing rule, recommending an ESA "endangered" status for the species. However, based on the available information and our evaluation of the data in light of the standards on extinction risk, threats to the species, and ESA definitions, we determined that the status of the Guadalupe fur seal corresponded with the ESA definition of a "threatened" species. Thus, as we did with the Guadalupe fur seal listing determination, we will continue to evaluate all sources of available information, in light of the ESA standards on extinction risk and impacts or threats to the species, to inform our ESA listing determinations.

**Comment 4:** One commenter cited the new 2015 IUCN assessment of *S. squatina* (Ferretti *et al.* 2015) as evidence of the bleak status of the species.

**Response:** We reviewed the new IUCN assessment of *S. squatina* (Ferretti *et al.* 2015) and evaluated the sources of available information cited within the assessment in light of the ESA standards on extinction risk and impacts or threats to the species. We did not find any new species-specific information on the impacts of threats or the biological response of the species to these threats that was not already considered in the proposed rule and draft status review report. The latest assessment references many of the same studies and findings discussed in the status review and proposed rule. We did, however, update the status review based on information from a reference cited within Ferretti *et al.* (2015), specifically Maynou *et al.* (2011). Maynou *et al.* (2011) conducted interview surveys of 106 retired fishermen who used to fish (either in the small scale fisheries or trawl fishers) in the Catalan, Ligurian, Tyrrhenian, north Adriatic, and Hellenic Seas, to see if these fishermen perceived any trends in dolphin and shark abundances between 1940 and 1999. As it applies to the three *Squatina* species of this action, the results from these interviews suggest that angelsharks disappeared from the Catalan Sea probably before 1959, from waters off the western Italian coast by the early 1980s, and from waters off Sardinia by the mid-1980s. As we already assumed potential extirpations of these species in the Ligurian and Tyrrhenian Seas and off the Balearic Islands based on other available information, this new information does not change our conclusions regarding the extinction risk of the species, but does provide further support for our assumptions and findings.

**Comment 5:** One commenter disagreed with our assessment of the

climate change threat to the three *Squatina* species. The commenter asserted that climate change is likely to harm all three *Squatina* species and provided the following reasons: (1) The climate change threat was only assessed for *S. squatina* in United Kingdom (UK) waters (based on the Jones *et al.* (2013) paper) and, therefore, our conclusion regarding climate change impacts are purely speculative for *S. aculeata* and *S. oculata*; (2) Our expected decrease in the angelshark species' overlap with commercially-targeted species is unlikely to occur; (3) Our projected increase in protected angelshark range is unlikely to occur; and (4) the three angelshark species are likely entirely unable to migrate to avoid the effects of climate change.

**Response:** Broad statements about generalized threats to the species, such as climate change, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Based on our comprehensive review of the literature, the Jones *et al.* (2013) paper was the only information we found that provided an analysis of the threat of climate change and potential response by a *Squatina* species (*S. squatina*). While the commenter disagreed with our reliance on the Jones *et al.* (2013) paper, the commenter did not provide any new species-specific information on the threat of climate change or evidence that the *Squatina* species are responding in a negative fashion to the threat. As such, and as stated in the proposed rule, the best available information does not indicate that climate change is contributing significantly to the extinction risk of these species. Below we provide further comments on each of the commenter's points mentioned above.

The commenter mentioned that the climate change threat was only assessed for *S. squatina* in UK waters and, therefore, our conclusion regarding climate change impacts are purely speculative for *S. aculeata* and *S. oculata*. We disagree that our conclusions are speculative. Rather, we state that our conclusions are based on the best available information. In the proposed rule, we note that besides the Jones *et al.* (2013) study (which examined the impacts from climate change for *S. squatina* in UK waters), "we found no other information regarding the response of *Squatina*

species to the impacts of climate change." Therefore, based on the best available information (*i.e.*, the Jones *et al.* (2013) paper) we did not find any evidence to suggest that climate change contributes significantly to the extinction risk of *S. squatina*, and, additionally, we have no information to suggest that climate change contributes significantly to the extinction risk of the other two *Squatina* species.

The commenter also asserts that our expected decrease in the angelshark species' overlap with commercially-targeted species, and the projected increase in protected angelshark range, are unlikely to occur, and speculates that the three angelshark species will be unable to migrate to avoid the effects of climate change. In the proposed rule, we cited findings from the Jones *et al.* (2013) paper, including that the impacts from a range shift due to climate change would likely be offset by an increase in availability of protected habitat areas for the common angelshark (*S. squatina*). We also noted that the predicted range shift would shrink the (common) angelshark's overlap with other commercially-targeted species. The commenter states that the proposed climate-induced shifts in range discussed in the Jones *et al.* (2013) paper predict only slight increases in habitat suitability in candidate marine protected areas, and because these are only candidate areas, the commenter notes that it is unclear whether these habitat areas will ever even be protected in the future. Additionally, according to the Jones *et al.* (2013) paper, and acknowledged by the commenter, *S. squatina* was predicted to have a small, but negative change of 2.7 percent in median overlap across all commercial species investigated. However, the commenter argues that this change is so miniscule when considering the effects that fishing of commercially-targeted species in areas currently overlapping with *S. squatina* has had over the last several decades. As such, bycatch pressure on *S. squatina* will likely remain high as the overlap will remain almost entirely the same. Finally, the commenter speculates that the three angelshark species may be unable to move to avoid climate change due to limited dispersal capabilities.

As already thoroughly discussed in the proposed rule and draft status review for these angelshark species, we agree that overutilization is a significant threat that has led to *S. squatina* being presently in danger of extinction. The purpose of the above information and discussion was to evaluate the specific impact of climate change and the corresponding likely response of the

common angelshark in order to evaluate the significance of this particular threat on the species' risk of extinction. As the commenter has made clear, the impact of climate change on the extinction risk of *S. squatina* appears negligible as it will unlikely alter the threat of overutilization to the species. Although a very minor range shift may occur, there is no information to suggest the species' response to climate change impacts would significantly alter its extinction risk (either through a decrease or increase in risk). Additionally, the commenter provides no information on the actual threat that climate change poses to the species, such as the species' biological or physiological responses to climate change impacts and the actual need for the species to migrate elsewhere, and we could find no such information. As such, our conclusion remains the same: The best available information does not suggest that climate change contributes significantly to the extinction risk of the species.

**Comment 6:** One commenter provided new information on historical catch of *Squatina* species in the Adriatic Sea (based on fish market data; Raicevich and Fortibuoni 2013) and information on benthic shark exploitation in the Canary Islands (Couce-Montero *et al.* 2015).

**Response:** We have updated the status review report to include this information. In particular, the new information indicates the contemporary presence of *S. squatina* in the Adriatic Sea (which was previously thought to be potentially extirpated), but demonstrates the significant decline in both abundance and size that has occurred in the population since the early 20th century (Fortibuoni *et al.* 2016), providing additional evidence of the overutilization of the species in this part of its range. Similarly, the Couce-Montero *et al.* (2015), which was a broad-scale study of the impacts of artisanal, recreational and industrial fleets on the Gran Canaria (Canary Islands) marine ecosystem, found overall fishing pressure by these fleets to be high and benthic sharks, as a functional group, to be overexploited. This new information does not change our conclusions regarding the extinction risk of the *Squatina* species.

**Comment 7:** One commenter suggested we consider the global impacts of recreational fishing on *S. squatina* and *S. aculeata*, providing a general description of some of the aspects of recreational fishing and ways it differs from commercial fishing.

**Response:** In our evaluation of threats in both the draft status review report

and proposed rule, we did consider impacts of recreational fishing on the *Squatina* species (see the *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes* sections of both documents). As the commenter did not provide any new species-specific information on threats from recreational fishing effort that was not already considered in the proposed rule and draft status review report, we have no reason to change our evaluation of the threat at this time.

**Comment 8:** One commenter provided information on the ancient and contemporary use of *S. oculata* in Spain for therapeutic purposes (Vallejo and Gonzalez 2014) and suggested this use is an additional threat to the species.

**Response:** The paper cited by the petitioner, Vallejo and Gonzalez (2014), provides simply an inventory of the fish species that have been used for medicinal purposes from ancient times to recent times in Spain. While we have updated the status review to include this new information on the use of the species, neither the study, nor the commenter, provide information on the extent or frequency that this species is collected for traditional Spanish remedies. Also, the contemporary evidence identified in the paper corresponds to *S. squatina* in Gran Canaria (Canary Islands), as opposed to *S. oculata*, and is from a 2004 article (González Salgado 2004) that also provides no information on the extent or frequency of use of *S. squatina* in traditional medicines. Finally, current regulations in Spain prohibit these *Squatina* species from being captured, injured, traded, imported, or exported. Therefore, we do not find any indication that the use of these species in traditional Spanish remedies is an additional threat that significantly increases these species' risks of extinction.

**Comment 9:** One commenter provided suggested edits to the background portions of the draft status review report to reflect the research they and others have conducted on *S. squatina* in the Canary Islands, and included information on the conservation initiatives of their nonprofit organization (ElasmoCan). Specifically, the commenter provided new (or clarified previous) information on the reproduction, growth, and distribution of *S. squatina*, identified a micropredator of *S. squatina* in the Canary Islands, provided details on the trawling prohibition in the Canary Islands, and highlighted the research they have conducted on the common angelshark within the Canary Islands. They also provided links to petitions

requesting that the Canary Islands become a shark and ray sanctuary, that *S. squatina* be added to the Canarian catalogue of protected species, and that recreational fishing in the Canary Islands be prohibited.

**Response:** We have updated the status review with the provided information where appropriate. None of the information provided by the commenter (which was primarily life history and distribution data for *S. squatina* within the Canary Islands) changed our analysis of the threats to the species. As stated in the proposed rule, current conservation efforts, including those by ElasmoCan, are helping to increase the scientific knowledge about *S. squatina* and promote public awareness of the species (as demonstrated by the petitions cited by the commenter); however, there is no indication that these efforts are currently effective in reducing the threats to the species, particularly those related to overutilization and the inadequacy of existing regulatory mechanisms. As such, our conclusion from the proposed rule regarding the overall extinction risk of *S. squatina* remains the same.

In addition to requesting public comment on our proposed rule, we also directly solicited comments from the foreign ambassadors of countries where the three *Squatina* species occur. We received responses from three embassies, and their comments, as well as our responses, are provided below.

**Comment 10:** The Libyan Embassy, through Dr. Ramadan, consultant of the International Cooperation Office of the General Corporation for Agriculture on fisheries and marine resources of Libya, commented that while the three *Squatina* sharks are found in Libyan waters, they are not targeted by fishermen, nor are they common in the catch. However, most of the fishing gear used in the traditional fisheries can catch the species (including trammel nets, gillnets, bottom trawls, longlines, and illegal explosive), and when caught as bycatch, Libyans will consume these sharks. Dr. Ramadan also provided names of the two marine protected areas in Libya that could afford the species some protection: Wadi Elkouf and Ain El Gazala, both located on the eastern Mediterranean coast.

**Response:** We thank Dr. Ramadan for the comments and have updated the status review accordingly. While the proposed rule and draft status review noted that the three *Squatina* species were "relatively common" in Libyan waters, with a caveat that there was no corresponding citation or more recent data to support the statement, this new information, particularly that the

species is not common in the fisheries catch yet susceptible to the traditional fishing gear, indicates that the species has likely significantly declined in abundance in Libyan waters over the past 10 years. We find this information lends further support to our conclusion that these species are presently at a high risk of extinction throughout their respective ranges.

**Comment 11:** The Sierra Leone Embassy, through the Ministry of Fisheries and Marine Resources, commented that the three *Squatina* sharks are found throughout the entire coastal waters of Sierra Leone, and endemic in the southern tip, from the shoal of Saint Ann to the boundary of Liberia and potentially beyond. Their presence has been recorded in both industrial fisheries and research survey data collected from 2008–2010.

*Squatina oculata* has also been recorded from artisanal landing sites in Bonthe, Sierra Leone. However, overall, in Sierra Leone waters, the *Squatina* species are sparsely distributed and seldom caught. The Ministry of Fisheries and Marine Resources expressed support for the listing of these species as endangered and provided a list of draft fisheries regulations pertaining to sharks, but noted that they will not close areas to fishing to protect these species.

**Response:** We thank the Sierra Leone Ministry of Fisheries and Marine Resources for the comments and have updated the status review accordingly. We note that while the survey data mentioned above indicate the recent presence of *S. squatina* in Sierra Leone waters, the range of the species in the Eastern Atlantic is thought to extend only as far south as Mauritania. It is unclear if these findings indicate a range expansion for the species, new migratory routes, a reflection of the true range of the species that was previously unknown due to poor sampling of the region, or perhaps, and more likely, misidentification of the species, as the species has yet to be identified from any other countries south of Mauritania, despite expansive historical sampling. Additionally, the draft nature of the regulations provided by the Ministry, and uncertainty regarding their implementation or effectiveness, coupled with the implication that the Ministry will not consider area closures where the species are found because they inhabit major fishing grounds in the territorial waters of Sierra Leone, we do not consider these efforts adequate to mitigate the existing threats to the point where extinction risk is significantly lowered for these three species.

**Comment 12:** The Embassy of Greece, through the Hellenic Ministry of Rural

Development and Food, commented that Greece meets its obligations arising from international conventions, such as the Barcelona Convention, and is a party to the General Fisheries Commission of the Mediterranean (GFCM), the regional fisheries management organization whose convention area includes Mediterranean waters and the Black Sea. The measures adopted by the GFCM are incorporated into European Law. The Ministry specifically highlighted GFCM recommendation GFCM/36/3012/3, which prohibits those sharks on Annex II of the Specially Protected Areas and Biological Diversity (SPA/BD) Protocol to the Barcelona Convention (which include the three *Squatina* species) from being retained on board, transhipped, landed, transferred, stored, sold or displayed, or offered for sale. The Ministry noted that the species must be released, as far as possible, unharmed and alive, and that there is an obligation of owners of fishing vessels to record information related to fishing activities, including capture data, incidental catch, and releases and/or discards of species.

**Response:** We thank the Hellenic Ministry of Rural Development and Food for the comments and have updated the status review accordingly. We note that while these regulations and retention prohibitions may decrease, to some extent, fisheries-related mortality of the *Squatina* species in the Mediterranean, for the most part, it appears that these *Squatina* species are normally discarded due to their low commercial value. Given the species' assumed high mortality rates in fishing gear (around 60 percent in trawls and 25–67 percent in gillnets), vulnerability to exploitation, present demographic risks, population declines and potential local extirpations to the point where all three species are rarely observed throughout the Mediterranean, and the evidence of continued intensive demersal fisheries operating throughout the Mediterranean, we conclude that these regulatory mechanisms are unlikely to significantly decrease the *Squatina* species' risks of extinction.

#### Summary of Changes From the Proposed Listing Rule

We reviewed, and incorporate as appropriate, scientific data from references that were not previously included in the draft status review report (Miller 2015) and proposed rule (80 FR 40969; July 14, 2015). We also incorporate, as appropriate, relevant information received as communications during the public comment process. We include the following references and

communications, which, together with previously cited references, represent the best available scientific and commercial data on *S. aculeata*, *S. oculata*, and *S. squatina*: El Dia Digital 2000; Lamboeuf *et al.* 2000; Maynou *et al.* 2011; Narváez 2012; Narváez *et al.* 2014; Couce-Montero *et al.* 2015; Gelbalder 2015; Osaer *et al.* 2015; Osaer and Narváez 2015; Dr. Ramadan personal communication (pers. comm.) 2016; Elasmocan pers. comm. 2016; Fitzpatrick *et al.* 2016; Fortibuoni *et al.* 2016; Narváez and Osaer 2016; Sierra Leone Ministry of Fisheries and Marine Resources pers. comm. 2016. However, the information not previously included in the draft status review or proposed rule does not present significant new findings that change any of our proposed listing determinations.

#### Status Review

The status review for the three angelshark species was conducted by a NMFS biologist in the Office of Protected Resources. In order to complete the status review, we compiled information on the species' biology, ecology, life history, threats, and conservation status from information contained in the petition, our files, a comprehensive literature search, and consultation with experts. Prior to publication of the proposed rule, the status review was subjected to peer review. Peer reviewer comments are available at [http://www.cio.noaa.gov/services\\_programs/prplans/PRsummaries.html](http://www.cio.noaa.gov/services_programs/prplans/PRsummaries.html). The status review report has since been updated (Miller 2016) based on the aforementioned information submitted by the public and new information collected since the publication of the proposed rule, and is available at: <http://www.nmfs.noaa.gov/pr/species/petition81.htm>.

This status review report provides a thorough discussion of the life history, demographic risks, and threats to the three angelshark species. We considered all identified threats, both individually and cumulatively, to determine whether these angelshark species respond in a way that causes actual impacts at the species level. The collective condition of individual populations was also considered at the species level, according to the four viable population descriptors discussed above.

#### Species Determinations

Based on the best available scientific and commercial information described or referenced above, and included in the status review report, we have determined that the sawback angelshark (*S. aculeata*), smoothback angelshark (*S.*

*oculata*), and common angelshark (*S. squatina*) are taxonomically-distinct species and therefore meet the definition of “species” pursuant to section 3 of the ESA and are eligible for listing under the ESA.

#### Summary of Factors Affecting the Three Species

Next we consider whether any one or a combination of the five threat factors specified in section 4(a)(1) of the ESA contribute to the extinction risk of these species. The comments that we received on the proposed rule and the additional information that became available since the publication of the proposed rule did not change our conclusions regarding any of the section 4(a)(1) factors or their interactions for these species. In fact, the majority of the new information received (Maynou *et al.* 2011; Couce-Montero *et al.* 2015; Dr. Ramadan pers. comm. 2016; Fortibuoni *et al.* 2016; Hellenic Ministry of Rural Development and Food pers. comm. 2016; Sierra Leone Ministry of Fisheries and Marine Resources pers. comm. 2016), and described previously in our response to comments, lends further support to our conclusion that the threats of overutilization and inadequacy of existing regulatory mechanisms are contributing significantly to the risk of extinction for all three *Squatina* species. Therefore, we incorporate herein all information, discussion, and conclusions on the summary of factors affecting the three angelshark species in the status review report (Miller 2016) and proposed rule (80 FR 40969; July 14, 2015).

#### Extinction Risk

None of the information we received from public comment on the proposed rule affected our extinction risk evaluations of these three angelshark species. We note that based on comments from Dr. Ramadan (pers. comm. 2016), we no longer find it likely that the *S. oculata* may be more common in portions of the central Mediterranean (*i.e.*, Libya), as was previously stated in the proposed rule. Additionally, based on the information from Fortibuoni *et al.* (2016), we no longer consider *S. squatina* to be extirpated from the entire Adriatic Sea, but find that the information from Maynou *et al.* (2011) provides further support for our assumption of the likelihood of extirpations of the *Squatina* species in the Ligurian, Tyrrhenian, and Catalan Seas. Additionally, we reviewed a recent abstract (Fitzpatrick *et al.* 2016) that provided preliminary information on the genetic population dynamics of *S.*

*squatina* in the Canary Islands, and found that the results of low genetic diversity support our previous assumption that the species is likely comprised of small, fragmented and isolated populations that are at an increased risk of random genetic drift and could experience the fixing of recessive detrimental alleles, reducing the overall fitness of the species.

While this information has been used to provide minor updates to our status review report, our evaluations and conclusions regarding extinction risk for these species remain the same. Therefore, we incorporate herein all information, discussion, and conclusions, with the minor updates noted above, on the extinction risk of the three angelshark species in the status review report (Miller 2016) and proposed rule (80 FR 40969; July 14, 2015).

### Protective Efforts

Finally, we considered conservation efforts to protect each species and evaluated whether these conservation efforts are adequate to mitigate the existing threats to the point where extinction risk is significantly lowered and the species' status is improved. While none of the information we received from public comment on the proposed rule affected our conclusions regarding conservation efforts to protect the three angelshark species, we have updated the status review report (Miller 2016) to reflect the information provided by Elasmocan during the public comment period on their conservation initiatives in the Canary Islands (Elasmocan pers. comm. 2016). We incorporate herein all information, discussion, and conclusions on the protective efforts for the three angelshark species in the status review report (Miller 2016) and proposed rule (80 FR 40969; July 14, 2015).

### Final Determination

We have reviewed the best available scientific and commercial information, including the petition, the information in the status review report (Miller 2016), the comments of peer reviewers, public comments, and information that has become available since the publication of the proposed rule. Based on the best available information, we find that all three *Squatina* species are in danger of extinction throughout their respective ranges. We assessed the ESA section 4(a)(1) factors and conclude that *S. aculeata*, *S. oculata*, and *S. squatina* all face ongoing threats of overutilization by fisheries and inadequate existing regulatory mechanisms throughout their ranges. *Squatina squatina* has also

suffered a significant curtailment of its range. These species' natural biological vulnerability to overexploitation and present demographic risks (e.g., low and declining abundance, small and isolated populations, patchy distribution, and low productivity) are currently exacerbating the negative effects of these threats and placing these species in danger of extinction. After considering efforts being made to protect each of these species, we could not conclude that the existing or proposed conservation efforts would alter the extinction risk for any of these species. Therefore, we are listing all three species as endangered.

### Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)); Federal agency requirements to consult with NMFS under section 7 of the ESA to ensure their actions do not jeopardize the species or result in adverse modification or destruction of critical habitat should it be designated (16 U.S.C. 1536); designation of critical habitat if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); and prohibitions on taking (16 U.S.C. 1538). In addition, recognition of the species' plight through listing promotes conservation actions by Federal and State agencies, foreign entities, private groups, and individuals. Because the ranges of these three species are entirely outside U.S. jurisdiction, the main effects of these endangered listings are prohibitions on take, including export and import.

### Identifying Section 7 Consultation Requirements

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and NMFS/USFWS regulations require Federal agencies to consult with us to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. It is unlikely that the listing of these species under the ESA will increase the number of section 7 consultations, because these species occur entirely outside of the United States and are unlikely to be affected by Federal actions.

### Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the

species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, critical habitat shall not be designated in foreign countries or other areas outside U.S. jurisdiction (50 CFR 424.12 (h)).

The best available scientific and commercial data as discussed above identify the geographical areas occupied by *S. aculeata*, *S. oculata*, and *S. squatina* as being entirely outside U.S. jurisdiction, so we cannot designate occupied critical habitat for these species. We can designate critical habitat in areas in the United States currently unoccupied by the species if the area(s) are determined by the Secretary to be essential for the conservation of the species. The best available scientific and commercial information on these species does not indicate that U.S. waters provide any specific essential biological function for any of the *Squatina* species. Therefore, based on the available information, we are not designating critical habitat for *S. aculeata*, *S. oculata*, or *S. squatina*.

### Identification of Those Activities That Would Likely Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and FWS published a policy (59 FR 34272) that requires us to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not likely constitute a violation of section 9 of the ESA. Because we are listing the three *Squatina* species as endangered, all of the prohibitions of section 9(a)(1) of the ESA will apply to these species. These include prohibitions against the import, export, interstate or foreign trade (including delivery, receipt, carriage, shipment, transport, sale and offering for sale), and "take" of these species. These prohibitions apply to all persons subject to the jurisdiction of the United States, including in the United States, its territorial sea, or on the high seas. Take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The intent of this policy is to increase public awareness of the effects of this listing on proposed and ongoing activities within the species' ranges. Activities that we believe could

(subject to the exemptions set forth in 16 U.S.C. 1539) result in a violation of section 9 prohibitions for these species include, but are not limited to, the following:

(1) Possessing, delivering, transporting, or shipping any individual or part (dead or alive) taken in violation of section 9(a)(1);

(2) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any individual or part, in the course of a commercial activity;

(3) Selling or offering for sale in interstate or foreign commerce any individual or part, except antique articles at least 100 years old; and

(4) Importing or exporting these angelshark species or any part of these species.

We emphasize that whether a violation results from a particular activity is entirely dependent upon the facts and circumstances of each incident. Further, an activity not listed may in fact constitute or result in a violation.

#### *Identification of Those Activities That Would Not Likely Constitute a Violation of Section 9 of the ESA*

Although the determination of whether any given activity constitutes a violation is fact dependent, we consider the following actions, depending on the circumstances, as being unlikely to violate the prohibitions in ESA section 9: (1) Take authorized by, and carried out in accordance with the terms and conditions of, an ESA section 10(a)(1)(A) permit issued by NMFS for purposes of scientific research or the enhancement of the propagation or survival of the species; and (2)

continued possession of parts that were in possession at the time of listing. Such parts may be non-commercially exported or imported; however the importer or exporter must be able to provide evidence to show that the parts meet the criteria of ESA section 9(b)(1) (*i.e.*, held in a controlled environment at the time of listing, in a non-commercial activity).

#### References

A complete list of the references used in this final rule is available upon request (see **ADDRESSES**).

#### Classification

##### *National Environmental Policy Act*

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F.2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA).

##### *Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act*

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, this final rule is exempt from review under Executive Order 12866 and the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. This final rule does not contain a collection-

of-information requirement for the purposes of the Paperwork Reduction Act.

##### *Executive Order 13132, Federalism*

In accordance with E.O. 13132, we determined that this final rule does not have significant Federalism effects and that a Federalism assessment is not required.

#### List of Subjects in 50 CFR Part 224

Endangered and threatened species, Exports, Imports, Transportation.

Dated: July 26, 2016.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 224 is amended as follows:

#### **PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES**

■ 1. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. In § 224.101, amend the table in paragraph (h) by adding entries for “Angelshark common,” “Angelshark sawback,” and “Angelshark smoothback” in alphabetical order under the “Fishes” table subheading to read as follows:

##### **§ 224.101 Enumeration of endangered marine and anadromous species.**

\* \* \* \* \*

(h) The endangered species under the jurisdiction of the Secretary of Commerce are:

Species <sup>1</sup>				Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity				
*	*	*	*	*	*	*
FISHES						
Angelshark, common .....	<i>Squatina squatina</i> .....	Entire species .....		81 FR [Insert <b>Federal Register</b> page where the document begins], August 1, 2016.	NA	NA
Angelshark, sawback .....	<i>Squatina aculeata</i> .....	Entire species .....		81 FR [Insert <b>Federal Register</b> page where the document begins], August 1, 2016.	NA	NA
Angelshark, smoothback .....	<i>Squatina oculata</i> .....	Entire species .....		81 FR [Insert <b>Federal Register</b> page where the document begins], August 1, 2016.	NA	NA
*	*	*	*	*	*	*

<sup>1</sup> Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).



\* \* \* \* \*

[FR Doc. 2016-18071 Filed 7-29-16; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 300**

[Docket No. 160104009-6617-02]

RIN 0648-BF65

**International Fisheries; Tuna and Tuna-Like Species in the Eastern Pacific Ocean; Fishing Restrictions Regarding Mobulid Rays**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is issuing regulations under the Tuna Conventions Act to implement Resolution C-15-04 (*Resolution on the Conservation of Mobulid Rays Caught in Association with Fisheries in the IATTC Convention Area*) of the Inter-American Tropical Tuna Commission (IATTC). These regulations prohibit any part or whole carcass of mobulid rays (*i.e.*, the family Mobulidae, which includes manta rays (*Manta spp.*) and devil rays (*Mobula spp.*)) caught in the IATTC Convention Area from being retained on board, transshipped, landed, stored, sold, or offered for sale. These regulations also provide requirements for the release of mobulid rays. This rule also revises related codified text for consistency with the recent amendments to the Tuna Conventions Act. This action is necessary for the United States to satisfy its obligations as a member of the IATTC.

**DATES:** This rule is effective August 1, 2016.

**ADDRESSES:** Copies of the Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2016-0035 or by contacting the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115-0070, or [RegionalAdministrator.WCRHMS@noaa.gov](mailto:RegionalAdministrator.WCRHMS@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Rachael Wadsworth, NMFS, West Coast Region, 562-980-4036.

**SUPPLEMENTARY INFORMATION:**

**Background on the IATTC**

On April 22, 2016, NMFS published a proposed rule in the **Federal Register** (81 FR 23669) to implement Resolution C-15-04 adopted by the IATTC in 2015. The proposed rule contained additional background information, including information on the IATTC, the international obligations of the United States as an IATTC member, and the need for regulations. The 30-day public comment period for the proposed rule closed on May 23, 2016.

The final rule is implemented under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*), as amended on November 5, 2015, by title II of Public Law 114-81. The recent amendments provide that the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department of Homeland Security, may promulgate such regulations as may be necessary to carry out U.S. international obligations under the Convention, including recommendations and decisions adopted by the IATTC. The Secretary's authority to promulgate such regulations has been delegated to NMFS.

This rule implements Resolution C-15-04 for U.S. commercial fishing vessels used in the IATTC Convention Area and prohibits any part or whole carcass of a mobulid ray caught by vessels owners or operators in the IATTC Convention Area from being retained on board, transshipped, landed, stored, sold, or offered for sale. The rule provides that the crew, operator, and owner of a U.S. commercial fishing vessel must promptly release unharmed, to the extent practicable, any mobulid ray (whether live or dead) caught in the IATTC Convention Area as soon as it is seen in the net, on the hook, or on the deck, without compromising the safety of any persons. If a mobulid ray is live when caught, the crew, operator, and owner of a U.S. commercial fishing vessel must follow the requirements for release that are incorporated into regulatory text. Regulations at 50 CFR 300.25 already required purse seine vessels to release all rays, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation. This rule revises regulations at 50 CFR 300.25 to specify that there are other regulatory release requirements specifically for mobulid rays, as described below.

The rule provides an exemption in the case of any mobulid ray caught in the IATTC Convention Area on a purse seine vessel that is not seen during

fishing operations and is delivered into the vessel hold. In this circumstance, the mobulid ray may be stored on board and landed, but the vessel owner or operator must show the whole mobulid ray to the on-board vessel observer at the point of landing for recording purposes, and then dispose of the mobulid ray at the direction of the responsible government authority. In U.S. ports, the responsible governmental authority is the NOAA Office of Law Enforcement divisional office nearest to the port or other authorized personnel. Mobulid rays that are caught and landed in this manner may not be sold or bartered, but may be donated for purposes of domestic human consumption consistent with relevant laws and policies.

In addition, this rule would also revise related codified text for consistency with the recent amendments to the Tuna Conventions Act made by Title II of Public Law 114-81, effective on November 5, 2015 (Tuna Conventions Act of 1950). The rule updates the purpose and scope for 50 CFR part 300, subpart C, by clarifying that the regulations in the subpart are issued under the "amended" authority of the Tuna Conventions Act of 1950, and that the regulations implement "recommendations and other decisions" of the IATTC for the conservation and management of stocks of "tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species" in the IATTC Convention Area. The rule also updates the definitions description at § 300.21 to clarify that the terms defined in § 300.2 include terms defined in the Antigua Convention. The rule also revises the description in § 300.25, which states how NOAA implements IATTC recommendations and decisions through rulemaking, to clarify that the Secretary, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard on behalf of the Secretary of the Department of Homeland Security, may promulgate such regulations as may be necessary to carry out U.S. international obligations.

In addition, to improve the readability of the regulatory text, this action moves several paragraphs of regulatory text related to bycatch in § 300.25(e) to a new section (§ 300.27) that is dedicated to incidental catch and retention requirements. Several paragraphs in the prohibitions at § 300.24 are updated for consistency with the new section.

**Public Comments and Responses**

NMFS received three letters in response to the proposed rule during the

30-day comment period that closed on May 23, 2016. The first letter, submitted jointly by three non-governmental organizations (NGOs), supported the proposed regulations and also requested that the United States work to close the exemption in the IATTC Resolution C-15-04 for developing small-scale and artisanal fisheries. NMFS responds to that comment below. The second letter, from a member of the public, supported the proposed regulations. A third letter, submitted jointly by two NGOs, provided seven documents containing biological information and further conservation recommendations about mobulid rays in the IATTC Convention Area but did not directly express a view on the proposed regulations. These documents seem to support the intent of the proposed rule.

**Comment:** We remain concerned about the broader exemptions allowed under Resolution C-15-04 that exempt small scale fisheries from mobulid ray retention bans. We urge the United States to work to close loopholes and otherwise improve mobulid ray protection, data collection, and related capacity building at future meetings of the IATTC.

**Response:** As described in the preamble of the proposed rule, the requirements of Resolution C-15-04 do not apply to small-scale and artisanal fisheries that fish exclusively for domestic consumption and that are flagged/registered by a developing Member or Cooperating Non-Member. Because the United States is not a developing nation, this exclusion was not implemented in U.S. regulations. NMFS recognizes the conservation concerns expressed by the commenter about providing this exemption that allows certain other IATTC Members or Cooperating Non-Members to continue taking mobulid rays. However, NMFS also acknowledges that the IATTC took an important first step in conservation measures for mobulid rays and that the IATTC can work to strengthen these measures in future meetings.

#### Changes From the Proposed Rule

In § 300.27(g), the description of responsible government authority in U.S. ports was revised to clarify that the responsible governmental authority in U.S. ports is the NOAA Office of Law Enforcement divisional office nearest to the port. Previously the language specified the Western Division and Pacific Island Division, which may be too limiting to vessels landing in ports outside of these regions. In addition, the language within the same paragraph is revised to clarify that the observer should be shown the whole mobulid ray

to the observer at the point of landing specifically for recording purposes rather than for other purposes.

#### Classification

The NMFS Assistant Administrator has determined that this rule is consistent with the Tuna Conventions Act and other applicable laws. This rule has been determined to be not significant for purposes of Executive Order 12866. Additionally, although there are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), existing collection-of-information requirements still apply under the following Control Numbers: 0648-0148, 0648-0214, and 0648-0593. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid Office of Management and Budget control number.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. On December 29, 2015, the NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

The certification under the Regulatory Flexibility Act was developed for this regulatory action at the proposed rule stage using SBA's former size standards. Thus, NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. The new standard could result in a few less commercial finfish businesses being considered small. However, NMFS has determined

that the new size standard does not affect its underlying analysis and, thus, NMFS has not changed its decision to certify this regulatory action.

As described in the proposed rule, the small entities that would be affected by this action are U.S. commercial fishing vessels that may be used for IATTC fisheries in the IATTC Convention Area (*i.e.*, purse seine, longline, and large-mesh drift gillnet (DGN)). There are two components to the U.S. tuna purse seine fishery in the EPO: (1) Purse seine vessels with at least 363 metric tons (mt) of fish hold volume (size class 6 vessels) that typically have been based in the western and central Pacific Ocean, and (2) coastal purse seine vessels with smaller fish hold volume that are based on the U.S. West Coast. As of July 2016, there are 15 size class 6 purse seine vessels on the IATTC Regional Vessel Register. In recent years, size class 6 purse seine vessels have landed most of the yellowfin, skipjack, and bigeye tuna catch in the EPO. Estimates of ex-vessel revenues for size class 6 purse seine vessels in the IATTC Convention Area since 2005 are confidential and may not be publicly disclosed because of the small number of vessels in the fishery. Since 2010, fewer than three coastal purse seine vessels targeted tunas; therefore, their landings and revenue are confidential. In 2014, eight coastal purse seine vessels landed 1,413 mt of tuna (ex-vessel value of about \$1,535,000) in west coast ports. Participation in the large-mesh DGN fishery has declined significantly over the years, from 78 vessels in 2000 to 18 in 2013. The large-mesh DGN fishery primarily targets swordfish and to a lesser extent common thresher shark. During 2003 to 2014, the average ex-vessel value of the landings by the large mesh DGN fishery remained near \$1.8 million per year. U.S. West Coast vessels with deep-set longline gear primarily target tuna species with a small percentage of swordfish and other highly migratory species taken incidentally. U.S. West Coast-based longline vessels fish primarily in the EPO and are currently restricted to fishing with deep-set longline gear outside of the U.S. West Coast EEZ. Given this restriction, there has been fewer than three west coast-based vessels operating out of southern California ports since 2005; therefore, landings and ex-vessel revenue are confidential. Recently, the number of Hawaii-permitted longline vessels that have landed in west coast ports has increased from one vessel in 2006 to 14 vessels in 2014. In 2014, 621 mt of highly migratory species were landed by Hawaii permitted longline vessels with

an average ex-vessel revenue of approximately \$247,857 per vessel.

NMFS considers all entities subject to this action to be small entities as defined by both the former, lower size standards and the revised size standards. Because each affected vessel is a small business, this proposed action is considered to equally affect all of these small entities in the same manner. This action is not expected to change the typical fishing practices of affected vessels or the income of U.S. vessels because these vessels do not target mobulid rays, and do not commonly catch mobulid rays, even incidentally. The action is not expected to have a significant economic impact on substantial number of small entities. Accordingly, vessel income is not expected to be altered as a result of this rule. This action is not likely to increase the economic or record keeping and reporting burden on U.S. vessel owners and operators.

Further details on the factual basis for the certification were published in the proposed rule (April 22, 2016, 81 FR 23669) and are not repeated here. No comments were received regarding the certification. Therefore, the certification published with the proposed rule that states this rule is not expected to have a significant economic impact on a substantial number of small entities is still valid. As a result, a regulatory flexibility analysis was not required and none was prepared.

The Assistant Administrator for Fisheries has determined that good cause exists under 5 U.S.C. 553(d)(3) to waive the requirement for a 30-day delay in effectiveness. If this rule were subject to the 30-day delay in effectiveness, the United States would not be able to satisfy its international obligations to implement legally binding IATTC Resolution C-15-04 by August 1, 2016, which is the effective date specified in the resolution. Additionally, the rule does not require the regulated entities to undertake actions (such as purchasing equipment, re-writing software, creating new reporting sheets, or training in new skills) in order to come into compliance with this rule prior to the effective date. As soon as the rule is filed with the Office of the Federal Register, notice will be sent to inform members of the tuna-fishing industry.

#### List of Subjects in 50 CFR Part 300

Fish, Fisheries, Fishing, Fishing vessels, International organizations, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: July 26, 2016.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

#### PART 300—INTERNATIONAL FISHERIES REGULATIONS

- 1. The authority citation for part 300, subpart C, continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*

- 2. Section 300.20 is revised to read as follows:

##### § 300.20 Purpose and scope.

The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950, as amended, (Act) and apply to persons and vessels subject to the jurisdiction of the United States. The regulations implement recommendations and other decisions of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of stocks of tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species in the IATTC Convention Area.

- 3. In § 300.21, revise the introductory text and add a definition for “Mobulid ray” in alphabetical order to read as follows:

##### § 300.21 Definitions.

In addition to the terms defined in § 300.2, in the Act, the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), and the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, in the Act, or in the Antigua Convention, the definition in this section shall apply.

\* \* \* \* \*

*Mobulid ray* means any animal in the family Mobulidae, which includes manta rays (*Manta spp.*) and devil rays (*Mobula spp.*).

\* \* \* \* \*

- 4. In § 300.24, revise paragraphs (e), (f), (h), (t), (w), and (x) and add paragraphs (cc) and (dd) to read as follows:

##### § 300.24 Prohibitions.

\* \* \* \* \*

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 using purse seine gear in the Convention Area as required under § 300.27(a).

(f) When using purse seine gear to fish for tuna in the Convention Area, fail to release any non-tuna species as soon as practicable after being identified on board the vessel during the brailing operation as required in § 300.27(b).

\* \* \* \* \*

(h) Fail to use the sea turtle handling, release, and resuscitation procedures in § 300.27(c).

\* \* \* \* \*

(t) Use a U.S. fishing vessel to fish for HMS in the Convention Area and retain on board, transship, land, store, sell, or offer for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or fail to release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel in contravention of § 300.27(d).

\* \* \* \* \*

(w) Set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) in contravention of § 300.27(e).

(x) Fail to release a whale shark encircled in a purse seine net of a fishing vessel as required in § 300.27(f).

\* \* \* \* \*

(cc) To retain on board, transship, store, land, sell, or offer for sale any part or whole carcass of a mobulid ray, as described in § 300.27(g).

(dd) Fail to handle or release a mobulid ray as required in § 300.27(h).

- 5. In § 300.25, revise paragraph (a), remove paragraph (e), and redesignate paragraphs (f) through (h) as (e) through (g), respectively.

The revision reads as follows:

##### § 300.25 Eastern Pacific fisheries management.

(a) *IATTC recommendations and decisions.* The Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, may promulgate such regulations as may be necessary to carry out the U.S. international obligations under the Convention, Antigua Convention, and the Act, including recommendations and other decisions adopted by the IATTC.

\* \* \* \* \*

- 6. Section 300.27 is added to subpart C to read as follows:

**§ 300.27 Incidental catch and tuna retention requirements.**

(a) *Tuna retention requirements for purse seine vessels.* Bigeye, skipjack, and yellowfin tuna caught in the Convention Area by a fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except for fish deemed unfit for human consumption for reasons other than size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

(b) *Release requirements for non-tuna species on purse seine vessels.* All purse seine vessels must release all shark, billfish, ray (not including mobulid rays, which are subject to paragraph (g) of this section), dorado (*Coryphaena hippurus*), and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation.

(c) *Sea turtle handling and release.* All purse seine vessels must apply special sea turtle handling and release requirements, as follows:

(1) Whenever a sea turtle is sighted in the net, a speedboat shall be stationed close to the point where the net is lifted out of the water to assist in release of the sea turtle;

(2) If a sea turtle is entangled in the net, net roll shall stop as soon as the sea turtle comes out of the water and shall not resume until the sea turtle has been disentangled and released;

(3) If, in spite of the measures taken under paragraphs (c)(1) and (c)(2) of this section, a sea turtle is accidentally brought on board the vessel alive and active, the vessel's engine shall be disengaged and the sea turtle shall be released as quickly as practicable;

(4) If a sea turtle brought on board under paragraph (c)(3) of this section is alive but comatose or inactive, the resuscitation procedures described in § 223.206(d)(1)(i)(B) of this title shall be used before release of the turtle.

(d) *Oceanic whitetip shark restrictions.* The crew, operator, or owner of a fishing vessel of the United States used to fish for HMS in the Convention Area shall be prohibited from retaining on board, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) and must release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel.

(e) *Whale shark restrictions for purse seine vessels.* Owners, operators, and crew of fishing vessels of the United States commercially fishing for tuna in the Convention Area may not set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) if the animal is sighted prior to the commencement of the set or the attempted set.

(f) *Whale shark release.* The crew, operator, and owner of a fishing vessel of the United States commercially fishing for tuna in the Convention Area must release as soon as possible, any whale shark that is encircled in a purse seine net, and must ensure that all reasonable steps are taken to ensure its safe release.

(g) *Mobulid ray restrictions.* The crew, operator, and owner of a U.S. commercial fishing vessel is prohibited from retaining on board, transshipping, storing, landing, selling, or offering for sale any part or whole carcass of a mobulid ray that is caught in the IATTC Convention Area, except as provided in the following sentence. In the case of any mobulid ray caught in the IATTC Convention Area on an observed purse seine vessel that is not seen during fishing operations and is delivered into the vessel hold, the mobulid ray may be stored on board and landed, but the vessel owner or operator must show the whole mobulid ray to the on-board observer at the point of landing for recording purposes, and then dispose of the mobulid ray at the direction of the responsible government authority. In U.S. ports the responsible governmental authority is the NOAA Office of Law Enforcement divisional office nearest to the port, or other authorized personnel. Mobulid rays that are caught and landed in this manner may not be sold or bartered, but may be donated for purposes of domestic human consumption consistent with relevant laws and policies.

(h) *Mobulid ray handling and release.* The crew, operator, and owner of a U.S. commercial fishing vessel must promptly release unharmed, to the extent practicable, any mobulid ray (whether live or dead) caught in the IATTC Convention Area as soon as it is seen in the net, on the hook, or on the deck, without compromising the safety of any persons. If a mobulid ray is live when caught, the crew, operator, and owner of a U.S. commercial fishing vessel must use the release procedures described in the following two paragraphs.

(1) No mobulid ray may be gaffed, no mobulid ray may be lifted by the gill slits or spiracles or by using bind wire against or inserted through the body,

and no holes may be punched through the bodies of mobulid ray (e.g., to pass a cable through for lifting the mobulid ray).

(2) Applicable to purse seine operations, large mobulid rays must be brailed out of the net by directly releasing the mobulid ray from the brailer into the ocean. Large mobulid rays that cannot be released without compromising the safety of persons or the mobulid ray before being landed on deck, must be returned to the water as soon as possible, either utilizing a ramp from the deck connecting to an opening on the side of the boat, or lowered with a sling or net, using a crane if available. The minimum size for the sling or net must be at least 25 feet in diameter.

[FR Doc. 2016–18083 Filed 7–29–16; 8:45 am]

BILLING CODE 3510–22–P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 150818742–6210–02]

RIN 0648–XE771

**Fisheries of the Exclusive Economic Zone Off Alaska; Dusky Rockfish in the West Yakutat District of the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for dusky rockfish in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2016 total allowable catch of dusky rockfish in the West Yakutat District of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), July 27, 2016, through 2400 hours, A.l.t., December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 total allowable catch (TAC) of dusky rockfish in the West Yakutat District of the GOA is 275 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2016 TAC of dusky rockfish in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 270 mt, and is setting aside the remaining 5 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for dusky rockfish in the West Yakutat District of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for dusky rockfish in the West Yakutat District of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 26, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 27, 2016.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016–18122 Filed 7–27–16; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 150818742–0610–02]

**RIN 0648–XE772**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2016 total allowable catch of Pacific ocean perch in the West Yakutat District of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), July 27, 2016, through 2400 hours, A.l.t., December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 total allowable catch (TAC) of Pacific ocean perch in the West Yakutat District of the GOA is 2,847 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region,

NMFS (Regional Administrator), has determined that the 2016 TAC of Pacific ocean perch in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,747 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific ocean perch in the West Yakutat District of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 26, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 27, 2016.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2016–18126 Filed 7–27–16; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register

Vol. 81, No. 147

Monday, August 1, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

[Doc. No. AMS–SC–16–0042; SC16–948–1 PR]

#### Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the Colorado Potato Administrative Committee, Area No. 2 (Committee) to revise the grade requirement currently prescribed for 1½-inch minimum to 2¼-inch maximum diameter (Size B) potatoes under the Colorado potato marketing order (order). The Committee locally administers the order and is comprised of producers and handlers of potatoes operating within the area of production. This action would relax the current minimum grade requirement for Size B red potatoes from U.S. Commercial grade or better to U.S. No. 2 grade or better. Relaxing this grade requirement would allow area handlers to supply new markets with U.S. No. 2 grade Size B red potatoes and is expected to benefit producers, handlers, and consumers.

**DATES:** Comments must be received by September 30, 2016.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for

public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Sue Coleman, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: [Sue.Coleman@ams.usda.gov](mailto:Sue.Coleman@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing

on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revisions to the grade requirement currently prescribed for Size B potatoes under the order. This proposal would relax the current minimum grade requirement for Size B red potatoes from U.S. Commercial grade to U.S. No. 2 grade. This change was unanimously recommended by the Committee at a meeting held on March 17, 2016.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the order’s production area. Section 948.21 authorizes the modification, suspension, or termination of regulations issued pursuant to § 948.22.

Under the Colorado potato marketing order, the State of Colorado is divided into three areas of regulation for marketing order purposes. These include: Area 1, commonly known as the Western Slope; Area 2, commonly known as San Luis Valley; and, Area 3, which consists of the remaining producing areas within the State of Colorado not included in the definitions of Area 1 or Area 2. Currently, the order only regulates the handling of potatoes produced in Area 2 and Area 3. Regulation for Area 1 has been suspended.

The grade, size, and maturity requirements specific to the handling of potatoes grown in Area 2 are contained in § 948.386 of the order. The current handling regulation requires that, for all varieties, Size B potatoes (1½-inch minimum to 2¼-inch maximum diameter as designated in the U.S. Standards for Grades of Potatoes) may be handled under the order, if such potatoes meet or exceed the requirements of the U.S. Commercial grade.

At the March 17, 2016, Committee meeting, industry participants indicated to the Committee that there is demand in several markets, including the food service market, for Size B, U.S. No. 2 grade red potatoes. They further stated

that the order's current grade requirement for Size B potatoes (U.S. Commercial grade or better) precludes handlers from supplying this growing and profitable market. Relaxing the grade requirement for Size B red potatoes would allow area handlers to compete with other domestic potato producing regions. This change would effectively lower the allowable grade for red varieties of Size B potatoes from U.S. Commercial grade or better to U.S. No. 2 grade or better.

Relaxing the grade requirement to allow shipments of U.S. No. 2 grade Size B red potatoes would make more potatoes available to consumers and would allow Area 2 handlers to move more of the area's potato production into the fresh market. This change is expected to benefit producers, handlers, and consumers of potatoes.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 66 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 150 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

During the 2014–2015 marketing year, the most recent full marketing year for which statistics are available, 14,075,876 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on information reported by USDA's Market News Service, the average f.o.b. shipping point price for the 2014–2015 Colorado potato crop was \$8.60 per hundredweight. Multiplying \$8.60 by the shipment quantity of 14,075,876 hundredweight yields an annual crop revenue estimate

of \$121,052,534. The average annual fresh potato revenue for each of the 66 handlers is therefore calculated to be \$1,834,129 (\$121,052,534 divided by 66), which is less than the SBA threshold of \$7,500,000. Consequently, on average most of the Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for the 2014 Colorado fall potato crop was \$8.25 per hundredweight. Multiplying \$8.25 by the shipment quantity of 14,075,876 hundredweight yields an annual crop revenue estimate of \$116,125,977. The average annual fresh potato revenue for each of the 150 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$774,173 (\$116,125,977 divided by 150), which is greater than the SBA threshold of \$750,000. Consequently, on average, many of the Area No. 2 Colorado potato producers may not be classified as small entities.

This proposal would relax the minimum grade requirement prescribed for 1½-inch minimum diameter to 2¼-inch maximum diameter (Size B) red potatoes under the order. Currently, the handling of Size B potatoes is allowed if the potatoes otherwise meet or exceed the requirements of the U.S. Commercial grade standard. This change would effectively lower the minimum grade requirement for Size B red potatoes from U.S. Commercial grade or better to U.S. No. 2 grade or better. Relaxing the grade requirement would allow Colorado Area 2 handlers to supply markets with U.S. No. 2 grade Size B red potatoes and enable them to better compete with the other domestic potato producing regions. The proposed change in the handling regulations is expected to benefit producers, handlers, and consumers. All other requirements in the order's handling regulations would remain unchanged. Authority for this action is contained in §§ 948.20, 948.21, and 948.22 of the order.

This relaxation is expected to benefit producers, handlers, and consumers of Colorado Area 2 potatoes by allowing a greater quantity of potatoes from the production area to enter the fresh market. The anticipated increase in volume is expected to translate into greater returns for handlers and producers, and more purchasing options for consumers.

After discussing possible alternatives to this proposed rule, the Committee determined that a relaxation in the grade requirement for Size B red potatoes would meet the industry's current needs while maintaining the

integrity of the order's quality objectives. During its deliberations, the Committee considered making no changes to the handling regulation, as well as relaxing the grade requirement for all Size B potatoes. The Committee believes that a relaxation in the handling regulation for Size B red potatoes is necessary to allow handlers to pursue new markets, but lowering the grade requirement for all other types and varieties of Size B potatoes to U.S. No. 2 grade or better could erode the quality reputation of the area's production. Therefore, the Committee found that there were no other viable alternatives to the proposal as recommended.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, (Generic Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would relax minimum grade requirement under the Colorado Area 2 potato marketing order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 17, 2016, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.



A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

#### PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

*Authority:* 7 U.S.C. 601–674.

■ 2. In § 948.386, paragraph (a)(3) is revised to read as follows:

#### § 948.386 Handling regulation.

\* \* \* \* \*

(a) \* \* \*

(3) *1½-inch minimum to 2¼-inch maximum diameter (Size B). U.S. Commercial grade or better, except that red varieties may be U.S. No. 2 grade or better.*

\* \* \* \* \*

Dated: July 27, 2016.

Elanor Starmar,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–18114 Filed 7–29–16; 8:45 am]

BILLING CODE 3410–02–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 51

[EPA–HQ–OAR–2015–0041; FRL–9949–76–OAR]

RIN 2060–AR94

#### Air Quality: Revision to the Regulatory Definition of Volatile Organic Compounds—Exclusion of 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) Ethane (HFE–347pcf2)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to revise the regulatory definition of volatile organic compounds (VOC) under the Clean Air Act (CAA). This proposed revision would add 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also known as HFE–347pcf2; CAS number 406–78–0) to the list of compounds excluded from the regulatory definition of VOC on the basis that this compound makes a negligible contribution to tropospheric ozone formation. In the “Rules and Regulations” section of this **Federal Register**, we are making this same amendment as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

**DATES:** Written comments must be received on or before August 31, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0041, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Souad Benromdhane, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Mail Code C539–07, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: (919) 541–4359; fax number: (919) 541–5315; email address: [benromdhane.souad@epa.gov](mailto:benromdhane.souad@epa.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

##### A. Why is the EPA issuing this proposed rule?

This document proposes to revise the EPA’s regulatory definition of VOC for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the CAA by adding HFE–347pcf2 to the list of compounds excluded from the regulatory definition of VOC on the basis that this compound makes a negligible contribution to tropospheric ozone formation. We have published a direct final rule in the “Rules and Regulations” section of this **Federal Register** because we view this action as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

##### B. Does this action apply to me?

Entities potentially affected by this direct final rule include, but are not necessarily limited to, state and local air pollution control agencies that adopt and implement regulations to control air emissions of VOC; and industries manufacturing and/or using HFE–347pcf2 as a precision cleaning agent to remove contaminants including oil, flux, fingerprints from items like medical devices, artificial implants, crucial military and aerospace items, electric components, printed circuit boards, optics, jewelry, ball bearings, aircraft guidance systems, film, relays and a variety of metal components, among others. In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this action will be posted on the EPA’s Web site <http://www.epa.gov/airquality/ozonepollution/actions.html#impl>.

*C. What should I consider as I prepare my comments for the EPA?*

**Submitting CBI:** Do not submit this information to the EPA through [www.regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

## II. Proposed Rule

This proposed action would revise the EPA's regulatory definition of VOC for purposes of preparing SIPs to attain the NAAQS for ozone under title I of the CAA, by adding HFE-347pcf2 to the list of compounds excluded from the regulatory definition of VOC on the basis that this compound makes a negligible contribution to tropospheric ozone formation. We have explained our reasons for this action in the preamble to the direct final rule. The regulatory text for the proposal is identical to that for the direct final rule published in the "Rules and Regulations" section of this **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published under "Rules and Regulations" of the **Federal Register**.

## III. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. It does not contain any recordkeeping or reporting requirements.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities

under the RFA. This action will not impose any requirements on small entities. This action removes HFE-347pcf2 from the regulatory definition of VOC and thereby relieves manufacturers, distributors and users of the compound from requirements to control emissions of the compound.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This proposed rule would remove HFE-347pcf2 from the regulatory definition of VOC and thereby relieves manufacturers, distributors and users from requirements to control emissions of the compound. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Since HFE-347pcf2 is utilized in specific industrial applications where children are not present and dissipates quickly, there is no exposure or disproportionate risk to children. This proposed rule would remove HFE-347pcf2 from the regulatory definition of VOC and thereby relieves manufacturers, distributors and users from requirements to control emissions of the compound.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This action does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action would remove HFE-347pcf2 from the regulatory definition of VOC and thereby relieves manufacturers, distributors and users of the compound from requirements to control emissions of the compound.

## List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 20, 2016.

**Gina McCarthy,**  
Administrator.

[FR Doc. 2016-17790 Filed 7-29-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2016-0209; FRL-9950-00-Region 4]

### Air Plan Approval; Alabama and North Carolina; Interstate Transport—2010 NO<sub>2</sub> Standards

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the North Carolina SIP, submitted by the North Carolina Department of Environmental Quality (NC DEQ) on March 24, 2016, and the portions of a revision to the Alabama State Implementation Plan (SIP),

submitted by the Alabama Department of Environmental Management (ADEM) on December 9, 2015, addressing the Clean Air Act (CAA or Act) interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure SIP.” Specifically, EPA is proposing to approve North Carolina’s March 24, 2016, SIP submission and the portions of Alabama’s December 9, 2015, SIP submission addressing interstate transport requirements for the 2010 NO<sub>2</sub> NAAQS.

**DATES:** Comments must be received on or before August 31, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No EPA–R04–OAR–2016–0209 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by telephone at (404) 562–9043 or via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state’s implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) and from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

Through these proposed actions, EPA is proposing to approve North Carolina’s

March 24, 2016, SIP submission and the portions of Alabama’s December 9, 2015, SIP submission addressing interstate transport requirements for the 2010 NO<sub>2</sub> NAAQS. All other applicable infrastructure SIP requirements for Alabama and North Carolina for the 2010 1-hour NO<sub>2</sub> NAAQS will be addressed in separate rulemakings. A brief background regarding the 2010 1-hour NO<sub>2</sub> NAAQS is provided below.

On January 22, 2010, EPA established a new 1-hour primary NAAQS for NO<sub>2</sub> at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. See 75 FR 6474 (February 9, 2010). This NAAQS is designed to protect against exposure to the entire group of nitrogen oxides (NO<sub>x</sub>). NO<sub>2</sub> is the component of greatest concern and is used as the indicator for the larger group of NO<sub>x</sub>. Emissions that lead to the formation of NO<sub>2</sub> generally also lead to the formation of other NO<sub>x</sub>. Therefore, control measures that reduce NO<sub>2</sub> can generally be expected to reduce population exposures to all gaseous NO<sub>x</sub> which may have the co-benefit of reducing the formation of ozone and fine particles both of which pose significant public health threats.

States were required to submit infrastructure SIP submissions for the 2010 1-hour NO<sub>2</sub> NAAQS to EPA no later than January 22, 2013. For comprehensive information on 2010 1-hour NO<sub>2</sub> NAAQS, please refer to the **Federal Register** notice cited above.

## II. What is EPA’s approach to the review of infrastructure SIP submissions?

The requirement for states to make a SIP submission of this type arises out of section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “each such plan” submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of section 110(a)(1) and (2) as “infrastructure SIP”

submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of Title I of the CAA, “regional haze SIP” submissions required by EPA rule to address the visibility protection requirements of section 169A of the CAA, and nonattainment new source review permit program submissions to address the permit requirements of CAA, Title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.<sup>1</sup> EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that “each” SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of Title I of the CAA, which specifically address nonattainment SIP

requirements.<sup>2</sup> Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years or in some cases three years, for such designations to be promulgated.<sup>3</sup> This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within section 110(a)(1) and (2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit “a plan” to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.<sup>4</sup> Similarly, EPA interprets the CAA to allow it to take

action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.<sup>5</sup>

Ambiguities within section 110(a)(1) and (2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states’ attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, because the content and scope of a state’s infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.<sup>6</sup>

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires attainment plan SIP submissions required by part D to meet the “applicable requirements” of section 110(a)(2); thus, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the

<sup>2</sup> See, e.g., “Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call; Final Rule,” 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

<sup>3</sup> EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

<sup>4</sup> See, e.g., “Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,” 78 FR 4339 (January 22, 2013) (EPA’s final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA’s 2008 PM<sub>2.5</sub> NSR rule), and “Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 PM<sub>2.5</sub> NAAQS,” 78 FR 4337 (January 22, 2013) (EPA’s final action on the infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS).

<sup>5</sup> On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee’s December 14, 2007 submittal.

<sup>6</sup> For example, implementation of the 1997 PM<sub>2.5</sub> NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

<sup>1</sup> For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; Section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of Title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

Prevention of Significant Deterioration (PSD) program required in part C of Title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.<sup>7</sup> EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).<sup>8</sup> EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure

SIP submissions.<sup>9</sup> The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (e.g., whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of Section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in section 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants,

including Greenhouse Gases. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the PM<sub>2.5</sub> NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (i.e., already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and EPA's policies addressing such excess emissions;<sup>10</sup> (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring

<sup>7</sup> EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

<sup>8</sup> "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

<sup>9</sup> EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

<sup>10</sup> Subsequent to issuing the 2013 Guidance, EPA's interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs has changed. See "State Implementation Plans: Response to Petition for Rulemaking: Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," 80 FR 33839 (June 12, 2015). As a result, EPA's 2013 Guidance (p. 21 & n.30) no longer represents the EPA's view concerning the validity of affirmative defense provisions, in light of the requirements of section 113 and section 304.

further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). Thus, EPA believes that it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.<sup>11</sup> It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in section 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other

NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of section 110(a)(1) and (2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.<sup>12</sup> Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.<sup>13</sup> Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing

such deficiency in a subsequent action.<sup>14</sup>

### III. What are the prongs 1 and 2 requirements?

For each new NAAQS, section 110(a)(2)(D)(i)(I) of the CAA requires each state to submit a SIP revision that contains adequate provisions prohibiting emissions activity in the state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in any downwind state. EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or conjointly as the "good neighbor" provision of the CAA. Section 110(a)(2)(D)(i)(I) requires the elimination of upwind state emissions that significantly contribute to nonattainment or interference with maintenance of the NAAQS in another state.

### IV. What is EPA's analysis of how Alabama and North Carolina addressed prongs 1 and 2?

#### A. Prong 1 (Significant Contribution to Nonattainment) for Alabama

Alabama has concluded that it does not contribute significantly to nonattainment of the 2010 1-hour NO<sub>2</sub> NAAQS in any other state for the following reasons: (1) There are no areas in Alabama or in the surrounding states that are designated as nonattainment for the 2010 NO<sub>2</sub> NAAQS; (2) monitored ambient NO<sub>2</sub> concentrations in the State and surrounding states are well below the 1-hour 2010 NO<sub>2</sub> NAAQS; (3) there are federal and SIP-approved state regulations in place to control NO<sub>x</sub> emissions in the State. EPA agrees with the State's conclusion based on the rationale discussed below.

First, there are no designated nonattainment areas for the 1-hr NO<sub>2</sub> NAAQS. On February 17, 2012, EPA designated the entire country as "unclassifiable/attainment" for the 2010 1-hour NO<sub>2</sub> NAAQS, stating that "available information does not indicate that the air quality in these areas exceeds the 2010 1-hour NO<sub>2</sub> NAAQS" (77 FR 9532).

Second, as part of its December 9, 2015 submittal, Alabama examined NO<sub>2</sub> monitoring data from 2012–2014 in the

<sup>12</sup> For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

<sup>13</sup> EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under section 110(k)(6) of the CAA to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

<sup>14</sup> See, e.g., EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

<sup>11</sup> By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption or affirmative defense for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

State and surrounding states. According to this data, the design values during this period are well below the 100 ppb standard with Georgia and Tennessee having the highest design values (49 ppb).

Third, in its submittal, Alabama identifies SIP-approved regulations at Alabama Administrative Code 335–3–8 that require controls and emission limits for certain NO<sub>x</sub> emitting sources in the State. These regulations include the SIP-approved portion of the NO<sub>x</sub> SIP call that requires certain NO<sub>x</sub> emitting sources to comply with a capped NO<sub>x</sub> emission budget.<sup>15</sup> Alabama also notes that it has implemented several federal programs that, while not relied upon to address its “good neighbor” obligations for the NO<sub>2</sub> NAAQS, have reduced NO<sub>x</sub> emissions within the State.<sup>16</sup> Alabama also controls NO<sub>x</sub> emissions at certain sources through source-specific measures pursuant to its SIP-approved permitting regulations at Alabama Administrative Code 335–3–14. These permitting requirements help ensure that no new or modified NO<sub>x</sub> sources in the State subject to these permitting regulations will significantly contribute to nonattainment or interfere with maintenance of the 2010 NO<sub>2</sub> NAAQS.

For all the reasons discussed above, EPA has preliminarily determined that Alabama does not contribute significantly to nonattainment of the 2010 1-hour NO<sub>2</sub> NAAQS in any other state and that Alabama’s SIP includes adequate provisions to prevent emissions sources within the State from significantly contributing to nonattainment of this standard in any other state.

#### *B. Prong 2 (Interference With Maintenance) for Alabama*

Alabama has concluded that it does not interfere with maintenance of the 2010 1-hour NO<sub>2</sub> NAAQS in any other state. As noted above, NO<sub>2</sub> design values in the State and in surrounding states are well below the standard, Alabama’s SIP contains provisions to control NO<sub>x</sub> emissions, and Alabama has implemented a number of federal programs that have reduced NO<sub>x</sub> emissions within the State. For these

reasons, EPA has preliminarily determined that Alabama is not interfering with maintenance of the 2010 1-hour NO<sub>2</sub> NAAQS in any other state and that Alabama’s SIP includes adequate provisions to prevent emissions sources within the state from interfering with maintenance of this standard in any other state.

#### *C. Prong 1 (Significant Contribution to Nonattainment) for North Carolina*

North Carolina has concluded that it does not contribute significantly to nonattainment of the 2010 1-hour NO<sub>2</sub> NAAQS in any other state for several reasons, including the following: (1) There are no areas in the country designated as nonattainment for the 2010 NO<sub>2</sub> NAAQS; (2) monitored ambient NO<sub>2</sub> concentrations in the State and in the surrounding states are well below the 1-hour 2010 NO<sub>2</sub> NAAQS; (3) NO<sub>x</sub> emissions have declined significantly and are expected to continue to decline through 2017 and beyond; and (4) there are federal and SIP-approved state regulations in place to control NO<sub>x</sub> emissions. EPA agrees with the State’s conclusion based on the rationale discussed below.

First, as noted above, there are no designated nonattainment areas for the 1-hr NO<sub>2</sub> NAAQS.

Second, North Carolina examined 1-hour NO<sub>2</sub> design values based on monitoring data collected between 2012–2014 from NO<sub>2</sub> monitors within North Carolina and surrounding states.<sup>17</sup> The design values during this period are well below the 100 ppb standard with Georgia and Tennessee having the highest design values (49 ppb).

Third, North Carolina reviewed 1996–2011 annual NO<sub>x</sub> emissions data for the State from EPA’s National Emissions Inventory and determined that the State’s NO<sub>x</sub> emissions have declined by approximately 50 percent during this time. North Carolina projects that NO<sub>x</sub> emissions from 2011–2017 in the State will decline by an additional 39 percent. The State also notes that NO<sub>x</sub> emissions from EGUs in North Carolina have declined between 2002–2011 primarily due to the State’s 2002 Clean

Smokestack Act (CSA).<sup>18</sup> The CSA establishes entity-wide caps on total annual NO<sub>x</sub> emissions from investor-owned coal-fired electric generating units (EGUs) in the State.<sup>19</sup>

Fourth, in addition to the CSA, North Carolina cites to a number of State regulations that address additional control measures, means, and techniques to reduce NO<sub>x</sub> emissions in North Carolina. Several of these regulations are SIP-approved, such as 15A NCAC 2D .0519 (controlling NO<sub>2</sub> and NO<sub>x</sub> emissions from sulfuric acid manufacturing plants) and 15A NCAC 2D .1409 (addressing NO<sub>x</sub> emissions from certain stationary internal combustion engines).<sup>20</sup> North Carolina also identifies a number of federal programs such as CSAPR that, while not relied upon to address its “good neighbor” obligations for the NO<sub>2</sub> NAAQS, reduce NO<sub>x</sub> emissions.<sup>21</sup>

For all of the reasons discussed above, EPA has preliminarily determined that North Carolina does not contribute significantly to nonattainment of the 2010 1-hour NO<sub>2</sub> NAAQS in any other state and that North Carolina’s SIP includes adequate provisions to prevent emissions sources within the State from significantly contributing to nonattainment of this standard in any other state.

#### *D. Prong 2 (Interference With Maintenance) for North Carolina*

North Carolina has concluded that it does not interfere with maintenance of the 2010 1-hour NO<sub>2</sub> NAAQS in any other state. As stated above, NO<sub>2</sub> design values in the State and in surrounding states are well below the standard; NO<sub>x</sub> emissions have decreased in the State and are projected to decrease further through 2017 and beyond; and NO<sub>x</sub> emissions are controlled through federal and SIP-approved state regulations. For these reasons, EPA has preliminarily determined that North Carolina is not interfering with maintenance of the

<sup>18</sup> EPA approved the CSA emissions caps into North Carolina’s SIP on September 26, 2011. *See* 76 FR 59250.

<sup>19</sup> The CSA limits NO<sub>x</sub> emissions from Duke Energy Progress, LLC EGUs and Duke Energy Carolinas, LLC EGUs to 35,000 tons and 25,000 tons, respectively, beginning on January 1, 2007, and tightens the emissions cap on Duke Energy Carolinas, LLC EGUs to 31,000 tons as of January 1, 2009.

<sup>20</sup> North Carolina identifies a number of SIP-approved state regulations that control NO<sub>x</sub> emissions within the state as well as some state regulations that are not part of the federally-approved SIP.

<sup>21</sup> CSAPR currently caps EGUs in the State at specific NO<sub>x</sub> and SO<sub>2</sub> emission budgets through a federal implementation plan (FIP). According to North Carolina, the State is on track to comply with the Phase I emission budgets established under the CSAPR FIP.

<sup>15</sup> On October 27, 1998 (63 FR 57356), EPA issued the NO<sub>x</sub> SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO<sub>x</sub> and providing a mechanism (the NO<sub>x</sub> Budget Trading Program) that states could use to achieve those reductions. Affected states were required to comply with Phase I of the SIP Call beginning in 2004 and Phase II beginning in 2007.

<sup>16</sup> The federal programs identified by the State include New Source Performance Standards (40 CFR part 60), National Emission Standards for Hazardous Air Pollutants (40 CFR parts 61 and 63), and the Cross-State Air Pollution Rule (CSAPR).

<sup>17</sup> North Carolina notes that two new near-road NO<sub>2</sub> monitors deployed in the State in 2014 show measured concentrations well below the 1-hour standard. The State believes that this data indicates that NO<sub>x</sub> emissions from mobile sources in North Carolina are unlikely to contribute to nonattainment or interfere with maintenance of the NO<sub>2</sub> NAAQS in a downwind state. These monitors were required as part of a modified NO<sub>2</sub> monitoring network to site monitors in locations where maximum NO<sub>2</sub> concentrations are expected to occur, including within 50 meters of major roadways.



2010 1-hour NO<sub>2</sub> NAAQS in any other state and that North Carolina's SIP includes adequate provisions to prevent emissions sources within the state from interfering with maintenance of this standard in any other state.

## V. Proposed Actions

As described above, EPA is proposing to approve North Carolina's March 24, 2016, SIP revision and the portions of Alabama's December 9, 2015, SIP revision addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) for the 2010 1-hour NO<sub>2</sub> NAAQS.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely propose to approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIPs are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 20, 2016.

**Heather McTeer Toney,**

*Regional Administrator, Region 4.*

[FR Doc. 2016-18151 Filed 7-29-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2014-0617; A-1-FRL-9950-02-Region 1]

### Air Plan Approval; VT; Prevention of Significant Deterioration, Nonattainment and Minor New Source Review

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve three State Implementation Plan (SIP) revisions submitted by the State of Vermont. These revisions primarily amend several aspects of Vermont's new source review permitting regulations. The permitting revisions are part of Vermont's major and minor stationary source preconstruction permitting programs, and are intended to align Vermont's regulations with the federal new source review regulations. The revisions also contain amendments to other Clean Air Act (CAA) requirements, including updating the State's ambient air quality standards and certain emissions limits for sources of nitrogen oxides and sulfur dioxide.

This action is being taken in accordance with the Clean Air Act.

**DATES:** Written comments must be received on or before August 31, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2014-0617 at <http://www.regulations.gov>, or via email to [mcdonnell.ida@epa.gov](mailto:mcdonnell.ida@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Ida E. McDonnell, Manager, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, (OEP05-2), Boston, MA 02109-3912, phone number (617) 918-1653, fax number (617) 918-0653, email [McDonnell.Ida@epa.gov](mailto:McDonnell.Ida@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period.



Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: July 20, 2016.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

[FR Doc. 2016-18157 Filed 7-29-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2016-0262; FRL-9948-09-Region 9]

#### Approval of California Air Plan Revisions, Placer County Air Pollution Control District and Ventura County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Placer County Air Pollution Control District (PCAPCD) and Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO<sub>x</sub>) and carbon monoxide emissions from stationary gas turbines, boilers, steam generators, and process heaters. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by August 31, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2016-0262 at <http://www.regulations.gov>, or via email to Andrew Steckel, Rules Office Chief, at [Steckel.Andrew@epa.gov](mailto:Steckel.Andrew@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Kevin Gong, EPA Region IX, (415) 972-3073, [Gong.Kevin@epa.gov](mailto:Gong.Kevin@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to the EPA. This proposal addresses the following local rules: PCAPCD Rule 250, “Stationary Gas Turbines,” and VCAPCD Rule 74.15.1, “Boilers, Steam Generators, and Process Heaters.” In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on a particular rule, we may adopt as final the rule that is not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 14, 2016.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2016-17905 Filed 7-29-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2016-0192; FRL-9949-91-Region 4]

#### Air Quality Plans; Florida; Infrastructure Requirements for the 2012 PM<sub>2.5</sub> National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) submission, submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), on December 14, 2015, for inclusion into the Florida SIP. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 Annual Fine Particulate Matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure SIP submission.” FDEP certified that the Florida SIP contains provisions that ensure the 2012 Annual PM<sub>2.5</sub> NAAQS is implemented, enforced, and maintained in Florida. EPA is proposing to determine that Florida’s infrastructure SIP submission, provided to EPA on December 14, 2015, satisfies certain required infrastructure elements for the 2012 Annual PM<sub>2.5</sub> NAAQS.

**DATES:** Written comments must be received on or before August 31, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2016-0192 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary

submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at [bell.tiereny@epa.gov](mailto:bell.tiereny@epa.gov).

#### SUPPLEMENTARY INFORMATION:

### I. Background

On December 14, 2012 (78 FR 3086, January 15, 2013), EPA promulgated a revised primary annual PM<sub>2.5</sub> NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) to 12.0 µg/m<sup>3</sup>. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2012 Annual PM<sub>2.5</sub> NAAQS to EPA no later than December 14, 2015.<sup>1</sup>

This rulemaking is proposing to approve portions of Florida's PM<sub>2.5</sub> infrastructure SIP submission for the applicable requirements of the 2012 Annual PM<sub>2.5</sub> NAAQS, with the

exception of the interstate transport requirements of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), for which EPA is not proposing any action in this rulemaking regarding these requirements. For the aspects of Florida's submittal proposed for approval in this rulemaking, EPA notes that the Agency is not approving any specific rule, but rather proposing that Florida's already approved SIP meets certain CAA requirements.

### II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements are summarized below and in EPA's September 13, 2013, memorandum entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).”<sup>2</sup>

<sup>2</sup> Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources<sup>3</sup>
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas<sup>4</sup>
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

### III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from Florida that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 Annual PM<sub>2.5</sub> NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of

nonattainment planning requirements of 110(a)(2)(C).

<sup>3</sup> This rulemaking only addresses requirements for this element as they relate to attainment areas.

<sup>4</sup> As mentioned above, this element is not relevant to this proposed rulemaking.

<sup>1</sup> In these infrastructure SIP submissions states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Florida's existing SIP consists largely of Florida Administrative Code (F.A.C.) rules adopted by FDEP and approved by EPA through the SIP revision process. However, there are some F.A.C. state regulations that are not part of the Florida federally-approved SIP. Throughout this rulemaking, unless otherwise indicated, the term “F.A.C.,” “Rule,” or “Chapter” indicate that the cited regulation has been approved into Florida's federally-approved SIP. The term “Florida Statutes” indicates cited Florida state statutes, which are not a part of the SIP unless otherwise indicated.

specific elements that “[e]ach such plan” submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of title I of the CAA, “regional haze SIP” submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.<sup>5</sup> EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that “each” SIP submission must meet the list of requirements therein, while EPA

has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.<sup>6</sup> Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.<sup>7</sup> This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit “a plan” to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.<sup>8</sup>

<sup>6</sup> See, e.g., “Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call; Final Rule,” 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

<sup>7</sup> EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

<sup>8</sup> See, e.g., “Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) Permitting,” 78 FR 4339 (January 22, 2013) (EPA’s final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA’s 2008 PM<sub>2.5</sub> NSR

Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.<sup>9</sup>

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states’ attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state’s infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.<sup>10</sup>

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the “applicable requirements” of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section

rule), and “Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 PM<sub>2.5</sub> NAAQS,” (78 FR 4337) (January 22, 2013) (EPA’s final action on the infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS).

<sup>9</sup> On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee’s December 14, 2007, submittal.

<sup>10</sup> For example, implementation of the 1997 PM<sub>2.5</sub> NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

<sup>5</sup> For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.<sup>11</sup> EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).<sup>12</sup> EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of

promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.<sup>13</sup> The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.*, whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

<sup>13</sup> EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations. On March 17, 2016, EPA released a memorandum titled, "Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)" to provide guidance to states for interstate transport requirements specific to the PM<sub>2.5</sub> NAAQS.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHG). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 PM<sub>2.5</sub> NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with

<sup>11</sup> EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

<sup>12</sup> "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.<sup>14</sup> It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As

a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.<sup>15</sup> Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.<sup>16</sup> Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.<sup>17</sup>

<sup>15</sup> For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

<sup>16</sup> EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

<sup>17</sup> See, e.g., EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including

#### IV. What is EPA's analysis of how Florida addressed the elements of the sections 110(a)(1) and (2) "infrastructure" provisions?

The Florida infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. *110(a)(2)(A) Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Florida's SIP are relevant to air quality control regulations. The regulations described below include enforceable emission limitations and other control measures. Chapters 62–204, *Air Pollution Control—General Provisions*; 62–210, *Stationary Sources—General Requirements*; 62–212, *Stationary Sources—Preconstruction Review*; 62–296, *Stationary Sources—Emissions Standards*; and 62–297, *Stationary Sources—Emissions Monitoring* collectively establish enforceable emissions limitations and other control measures, means or techniques for activities that contribute to PM<sub>2.5</sub> concentrations in the ambient air, and provide authority for FDEP to establish such limits and measures as well as schedules for compliance through SIP-approved permits to meet the applicable requirements of the CAA.

Additionally, the following sections of the Florida Statutes provide FDEP the authority to conduct certain actions in support of this infrastructure element. Section 403.061(9), Florida Statutes, authorizes FDEP to "[a]dopt a comprehensive program for the prevention, control, and abatement of pollution of the air . . . of the state," and section 403.8055, Florida Statutes, authorizes FDEP to "[a]dopt rules substantively identical to regulations adopted in the **Federal Register** by the United States Environmental Protection Agency pursuant to federal law . . ."

EPA has made the preliminary determination that the provisions contained in these State regulations and sections of the Florida Statutes, and Florida's practices satisfy section

section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

<sup>14</sup> By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

110(a)(2)(A) for the 2012 PM<sub>2.5</sub> NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during start up, shut down, and malfunction (SSM) operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, “State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown” (September 20, 1999), and the Agency is addressing such state regulations in a separate action.<sup>18</sup>

Additionally, in this action, EPA is not proposing to approve or disapprove that any existing state rules with regard to director’s discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director’s discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. *110(a)(2)(B) Ambient Air Quality Monitoring/Data System*: Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. SIP-approved rules at Chapters 62–204, 62–210, and 62–212 of the F.A.C. require the use of Federal Reference Method or equivalent monitors and also provide authority for FDEP to establish monitoring requirements through SIP-approved permits. Additionally, the following three sections of the Florida Statutes provide FDEP the authority to take specific actions in support of this infrastructure element: Section 403.061(1), Florida Statutes, authorizes FDEP to “[a]pprove and promulgate current and long-range plans developed to provide for air quality and control and pollution abatement;” Section 403.061(9), Florida Statutes, which authorizes DEP to “[a]dopt a comprehensive program for the

prevention, control and abatement of pollution of the air . . . of the State; and Section 403.061(11), Florida Statutes, authorizes FDEP to “[e]stablish ambient air quality . . . standards for the state as a whole or for any part thereof.” Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan, and includes a certified evaluation of the state’s ambient monitors and auxiliary support equipment.<sup>19</sup> In May 2015, Florida submitted its plan for 2014 to EPA. On October 29, 2015, EPA approved Florida’s monitoring network plan. Florida’s approved monitoring network plan can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA–R04–OAR–2016–0192. EPA has made the preliminary determination that Florida’s SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2012 Annual PM<sub>2.5</sub> NAAQS.

3. *110(a)(2)(C) Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources*: This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.*, the major source PSD program). FDEP’s 2012 Annual PM<sub>2.5</sub> NAAQS infrastructure SIP submission cited a number of SIP provisions to address these requirements. EPA’s rationale for its proposed action regarding each sub-element is described below. Specifically, FDEP cited Chapters 62–204, 62–210, 62–212, 62–243, 62–252, 62–256, 62–296 and 62–297 F.A.C. Collectively, these provisions of Florida’s SIP regulate the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. These regulations enable FDEP to regulate sources contributing to the 2012 Annual PM<sub>2.5</sub> NAAQS.

Additionally, the following two sections of the Florida Statutes provide

FDEP the authority to take specific actions in support of this infrastructure element. Section 403.061(6), Florida Statutes, requires FDEP to “[e]xercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution.” Section 403.121, Florida Statutes, authorizes FDEP to seek judicial and administrative remedies, including civil penalties, injunctive relief, and criminal prosecution for violations of any FDEP rule or permit.

*Enforcement*: Section 403.061(6), Florida Statutes, requires FDEP to “[e]xercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution.” Section 403.121, Florida Statutes, authorizes FDEP to seek judicial and administrative remedies, including civil penalties, injunctive relief, and criminal prosecution for violations of any FDEP rule or permit. These provisions provide FDEP with authority for enforcement of PM<sub>2.5</sub> emission limits and control measures.

*PSD Permitting for Major Sources*: EPA interprets the PSD sub-element to require that a state’s infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the structural PSD requirements for all regulated NSR pollutants. A state’s PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state’s SIP with respect to all structural PSD requirements that are due under the EPA regulations or the CAA on or before the date of the EPA’s proposed action on the infrastructure SIP submission. For the 2012 Annual PM<sub>2.5</sub> NAAQS, Florida’s authority to regulate new and modified sources to assist in the protection of air quality in attainment or unclassifiable areas is established in Florida Administrative Code Chapters 62–210, *Stationary Sources—General Requirements*, Section 200—*Definitions*, and 62–212, *Stationary Sources—Preconstruction Review*, Section 400—*Prevention of Significant Deterioration*, of the Florida SIP. Florida’s infrastructure SIP submission demonstrates that new major sources and major modifications in areas of the State designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title

<sup>18</sup> On June 12, 2015, EPA published a final action entitled, “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction.” See 80 FR 33840.

<sup>19</sup> On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.



I of the CAA to satisfy the infrastructure SIP PSD elements.<sup>20</sup>

*Regulation of minor sources and modifications:* Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2012 Annual PM<sub>2.5</sub> NAAQS. Florida's SIP-approved rules, 62–210.300, F.A.C., and 62–212.300, F.A.C., collectively govern the preconstruction permitting of modifications and construction of minor stationary sources, and minor modifications of major stationary sources.

EPA has made the preliminary determination that Florida's SIP and practices are adequate for program enforcement of control measures, regulation of minor sources and modifications, and preconstruction permitting of major sources and major modifications related to the 2012 Annual PM<sub>2.5</sub> NAAQS.

4. *110(a)(2)(D)(i)(I) and (II) Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (“prong 1”), and interfering with maintenance of the NAAQS in another state (“prong 2”). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (“prong 3”), or to protect visibility in another state (“prong 4”).

*110(a)(2)(D)(i)(I)—prongs 1 and 2:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will consider these requirements in relation to Florida's 2012 Annual PM<sub>2.5</sub> NAAQS infrastructure submission in a separate rulemaking.

*110(a)(2)(D)(i)(II)—prong 3:* With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: A PSD program meeting all the current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area for the relevant pollutant), a NNSR program that implements NAAQS for the relevant pollutant. As discussed in more detail above under section 110(a)(2)(C), Florida's SIP contains provisions for the State's PSD program that reflects the required structural PSD requirements to satisfy prong 3 of section 110(a)(2)(D)(i)(II). Florida addresses prong 3 through F.A.C. 62–204, 62–210, and 62–212 for the PSD and NNSR programs. EPA has made the preliminary determination that Florida's SIP and practices are adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2012 Annual PM<sub>2.5</sub> NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

*110(a)(2)(D)(i)(II)—prong 4:* Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions to protect visibility in other states. Florida's submission relied on EPA's approval of the State's regional haze SIP submission and incorporation of all relevant portions of Florida's visibility program into the State's implementation plan to address the prong 4 requirements of section 110(a)(2)(D)(i) for the 2012 Annual PM<sub>2.5</sub> NAAQS.<sup>21</sup> Federal regulations require that a state's regional haze SIP contain a long-term strategy to address regional haze visibility impairment in each Class I area within the state and each Class I area outside the state that may be affected by emissions from the state.<sup>22</sup> A state participating in a regional planning process, such as Florida, must include all measures needed to achieve its apportionment of emissions reduction obligations agreed upon through that process.<sup>23</sup> EPA's approval of Florida's

regional haze SIP therefore ensures that emissions from Florida are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2012 Annual PM<sub>2.5</sub> NAAQS.<sup>24</sup> Thus, EPA has made the preliminary determination that Florida's infrastructure SIP submissions for the 2012 Annual PM<sub>2.5</sub> NAAQS meet the requirements of prong 4 of section 110(a)(2)(D)(i)(II).

5. *110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Chapters 62–204, 62–210, and 62–212 of the F.A.C. require any new major source or major modification to undergo PSD or NNSR permitting and thereby provide notification to other potentially affected Federal, state, and local government agencies. Additionally, Florida does not have any pending obligation under sections 115 and 126 of the CAA relating to international or interstate pollution abatement. EPA has made the preliminary determination that Florida's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2012 Annual PM<sub>2.5</sub> NAAQS.

6. *110(a)(2)(E) Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality

North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

<sup>21</sup> EPA approved Florida's regional haze SIP—see 77 FR 71111 (November 29, 2012); 78 FR 53250 (August 29, 2013).

<sup>22</sup> See 40 CFR 51.308(d).

<sup>23</sup> See, e.g., 40 CFR 51.308(d)(3)(ii). Florida participated in the Visibility Improvement State and Tribal Association of the Southeast regional planning organization, a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Southeastern United States. Member state and tribal governments included: Alabama, Florida, Georgia, Kentucky, Mississippi,

<sup>24</sup> See EPA's September 13, 2013, guidance document entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” at pp. 32–35, available at: <http://www.epa.gov/air/urbanair/sipstatus/infrastructure.html>; see also memorandum from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, to Regional Air Division Directors, entitled “Guidance on SIP Elements Required Under Sections 110(1)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)” (September 25, 2009) at pp. 5–6, available at: [http://www.epa.gov/ttn/caaa/t1/memoranda/20090925\\_harnett\\_pm25\\_sip\\_110a12.pdf](http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf).

<sup>20</sup> For more information concerning how the Florida infrastructure SIP submission currently meets applicable requirements for the PSD elements (110(a)(2)(C); (D)(i)(I), prong 3; and (J)), see the technical support document in the docket for today's rulemaking.

for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Florida's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii), and (iii).

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), FDEP's infrastructure submissions demonstrate that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards and general policies, a system of permits, fee schedules for the review of plans, and other planning needs. Section 403.061(35), Florida Statutes, authorizes FDEP to exercise the duties, powers, and responsibilities required of the state under the federal CAA. Section 403.061(2), Florida Statutes, authorizes FDEP to "[h]ire only such employees as may be necessary to effectuate the responsibilities of the department." Section 403.061(4), Florida Statutes, authorizes FDEP to "[s]ecure necessary scientific, technical, research, administrative, and operational services by interagency agreement, by contract, or otherwise." Section 403.182, Florida Statutes, authorizes FDEP to approve local pollution control programs, and provides for the State air pollution control program administered by FDEP to supersede a local program if FDEP determines that an approved local program is inadequate and the locality fails to take the necessary corrective actions. Section 320.03(6), Florida Statutes, authorizes FDEP to establish an Air Pollution Control Trust Fund and use a \$1 fee on every motor vehicle license registration sold in the State for air pollution control purposes. As evidence of the adequacy of FDEP's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to FDEP on April 19, 2016, outlining 105 grant commitments and current status of these commitments for fiscal year 2015. The letter EPA submitted to FDEP can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA-R04-OAR-2016-0192. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2015, therefore, FDEP's grants were finalized and closed out. In addition, the requirements of 110(a)(2)(E)(i) and (iii) are evaluated when EPA performs a completeness determination for each SIP submittal. A completeness determination ensures that each submittal includes

information to address the adequacy of personnel, funding, and legal authority under state law has been used to carry out the state's implementation plan and related issues. FDEP's authority is included in all prehearings and final SIP submittal packages for approval by EPA. FDEP is responsible for submitting all revisions to the Florida SIP to EPA for approval. EPA has made the preliminary determination that Florida has adequate resources and authority for implementation of the 2012 Annual PM<sub>2.5</sub> NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP provide: (1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. For purposes of section 128(a)(1), Florida has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by an appointed Secretary. As such, a "board or body" is not responsible for approving permits or enforcement orders in Florida, and the requirements of section 128(a)(1) are not applicable. Florida is only subject to the requirements of 128(a)(2) and submitted the applicable statutes for incorporation into Florida SIP. Florida Statutes, specifically subsections 112.3143(4), F.S., *Voting conflicts* and 112.3144, F.S., *Full and public disclosure of financial interests* address the conflict of interest provisions applicable to the head of FDEP and all public officers within the Department. On July 30, 2012, EPA approved these Florida statutes into the SIP to comply with section 128 respecting state boards. See 77 FR 44485. EPA has made the preliminary determination that the State has adequately addressed the requirements of section 128(a)(2), and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements.

Therefore, EPA is proposing to approve Florida's infrastructure SIP submissions as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. *110(a)(2)(F) Stationary Source Monitoring and Reporting*: Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing (i) the installation, maintenance, and replacement of equipment, and the

implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. FDEP's infrastructure SIP submissions describe the establishment of requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. The Florida infrastructure SIP submissions also describe how the major source and minor source emission inventory programs collect emission data throughout the State and ensure the quality of such data. Florida meets these requirements through Chapters 62–204, 62–210, 62–212, 62–296, and 62–297, F.A.C., which require emissions monitoring and reporting for activities that contribute to PM<sub>2.5</sub> concentrations in the air, including requirements for the installation, calibration, maintenance, and operation of equipment for continuously monitoring or recording emissions, or provide authority for FDEP to establish such emissions monitoring and reporting requirements through SIP-approved permits and require reporting of PM<sub>2.5</sub> emissions.

The following sections of the Florida Statutes provide FDEP the authority to conduct certain actions in support of this infrastructure element. Section 403.061(13) authorizes FDEP to "[r]equire persons engaged in operations which may result in pollution to file reports which may contain . . . any other such information as the department shall prescribe . . .". Section 403.8055 authorizes FDEP to "[a]dopt rules substantively identical to regulations adopted in the **Federal Register** by the United States Environmental Protection Agency pursuant to federal law. . . ."

Section 90.401, Florida Statutes, defines relevant evidence as evidence tending to prove or disprove a material fact. Section 90.402, Florida Statutes, states that all relevant evidence is admissible except as provided by law. EPA is unaware of any provision preventing the use of credible evidence in the Florida SIP.<sup>25</sup>

<sup>25</sup> "Credible Evidence" makes allowances for owners and/or operators to utilize "any credible evidence or information relevant" to demonstrate



Additionally, Florida is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Florida made its latest update to the NEI on December 17, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site <http://www.epa.gov/ttn/chief/eiinformation.html>. EPA has made the preliminary determination that Florida's SIP and practices are adequate for the stationary source monitoring systems related to the 2012 Annual PM<sub>2.5</sub> NAAQS.

**8. 110(a)(2)(G) Emergency Powers:** This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Florida's infrastructure SIP submissions identify air pollution emergency episodes and preplanned abatement strategies as outlined in the Florida Statutes Sections 403.131 and 120.569(2)(n). These sections of the Florida Statutes were submitted for inclusion in the SIP to address the requirements of section 110(a)(2)(G) of the CAA and have been approved by EPA into Florida's SIP. Section 403.131 authorizes FDEP to: Seek injunctive relief to enforce compliance with this chapter or any rule, regulation or permit certification, or order; to enjoin any violation specified in Section 403.061(1); and to seek injunctive relief to prevent irreparable injury to the air, waters, and property, including animal,

compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard.

plant, and aquatic life, of the State and to protect human health, safety, and welfare caused or threatened by any violation. Section 120.569(2)(n), Florida Statutes, authorizes FDEP to issue emergency orders to address immediate dangers to the public health, safety, or welfare. EPA has made the preliminary determination that Florida's SIP, State laws, and practices are adequate to satisfy the infrastructure SIP obligations for emergency powers related to the 2012 Annual PM<sub>2.5</sub> NAAQS.

Accordingly, EPA is proposing to approve Florida's infrastructure SIP submissions with respect to section 110(a)(2)(G).

**9. 110(a)(2)(H) SIP Revisions:** Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. As previously discussed, FDEP is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Florida has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS.

The following sections of the Florida Statutes provide FDEP the authority to conduct certain actions in support of this element. Section 403.061(35) gives FDEP the broad authority to implement the CAA. Section 403.061(9) authorizes FDEP to "[a]dopt a comprehensive program for the prevention, control, and abatement of pollution of the air . . . of the state, and from time to time review and modify such programs as necessary." EPA has made the preliminary determination that Florida adequately demonstrates a commitment to provide future SIP revisions related to the 2012 Annual PM<sub>2.5</sub> NAAQS when necessary. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submissions with respect to section 110(a)(2)(H).

**10. 110(a)(2)(J) Consultation with government officials, public notification, and PSD and visibility protection:** EPA is proposing to approve Florida's infrastructure SIP for the 2012 Annual PM<sub>2.5</sub> NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section

121, the public notification requirements of section 127, PSD and visibility protection. EPA's rationale for each sub-element is described below.

**Consultation with government officials (121 consultation):** Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and federal land managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. Florida's SIP-approved Chapters 62–204, 62–210, and 62–212, as well as its Regional Haze Implementation Plan (which allows for continued consultation with appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Specifically, Florida adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. Required partners covered by Florida's consultation procedures include Federal, state and local transportation and air quality agency officials. Also, Section 403.061(21), Florida Statutes, authorizes FDEP to "[a]dvise, consult, cooperate, and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department". EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with government officials related to the 2012 Annual PM<sub>2.5</sub> NAAQS when necessary.

**Public notification (127 public notification):** FDEP has public notice mechanisms in place to notify the public of instances or areas exceeding the NAAQS along with associated health effects through the Air Quality Index reporting system in required areas. Section 403.061(20), Florida Statutes, authorizes FDEP to "[c]ollect and disseminate information . . . relating to pollution" and Florida implements an Air Quality Index reporting system to notify the public in impacted areas. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submissions with respect to section 110(a)(2)(J) public notification.

**PSD:** With regard to the PSD element of section 110(a)(2)(J), this requirement is met when a state demonstrates in an infrastructure SIP submission that its

PSD program meets all the current structural requirements of part C of title I of the CAA. As discussed in more detail above under the section discussing 110(a)(2)(C), Florida's SIP contains provisions for the State's PSD program that reflect the relevant SIP revisions pertaining to the required structural PSD requirements to satisfy the requirement of the PSD element of section 110(a)(2)(J). EPA has made the preliminary determination that Florida's SIP and practices are adequate for PSD permitting of major sources and major modifications related to the 2012 Annual PM<sub>2.5</sub> NAAQS for the PSD element of section 110(a)(2)(J).

**Visibility protection:** EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. FDEP referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so FDEP does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that Florida's infrastructure SIP submissions are approvable for section 110(a)(2)(J) in related to the 2012 Annual PM<sub>2.5</sub> NAAQS and that Florida does not need to rely on its regional haze program to address this element.

**11. 110(a)(2)(K) Air Quality Modeling and Submission of Modeling Data:** Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. SIP-approved sections of Chapter 62–204, 62–210, and 62–212, F.A.C., require use of EPA-approved modeling of pollutant-emitting sources that contribute to PM<sub>2.5</sub> concentrations in the ambient air. Also, the following sections of the Florida Statutes provide FDEP the authority to conduct actions in support of this element. Section 403.061(13), Florida Statutes, authorizes FDEP to “[r]equire persons engaged in operations which may result in pollution to file reports which may contain information relating to

locations, size of outlet, height of outlet, rate and period of emission, and composition and concentration of effluent and such other information as the department shall prescribe to be filed. . . .” Section 403.061(18), Florida Statutes, authorizes FDEP to “[e]ncourage and conduct studies, investigations, and research relating to pollution and its causes, effects, prevention, abatement, and control.” These regulations and State statutes demonstrate that Florida has the authority to conduct modeling and provide relevant data for the purpose of predicting the effect on ambient air quality of the 2012 Annual PM<sub>2.5</sub> NAAQS. Additionally, Florida participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2012 Annual PM<sub>2.5</sub> NAAQS, for the Southeastern states. Florida notes in its SIP submissions that the FDEP has the technical capability to conduct or review all air quality modeling associated with the NSR program and all SIP-related modeling, except photochemical grid modeling which is performed for FDEP under contract. All such modeling is conducted in accordance with the provisions of 40 CFR part 51, Appendix W, “Guideline on Air Quality Models.” Taken as a whole, Florida's air quality regulations and practices demonstrate that FDEP has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS had been promulgated, and to provide such information to the EPA Administrator upon request. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2012 Annual PM<sub>2.5</sub> NAAQS. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submissions with respect to section 110(a)(2)(K).

**12. 110(a)(2)(L) Permitting Fees:** This section requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other

costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V. Section 403.087(6)(a), Florida Statutes, directs FDEP to “require a processing fee in an amount sufficient, to the greatest extent possible, to cover the costs of reviewing and acting upon any application for a permit. . . .”. Florida's Air Pollution Control Trust Fund is the depository for all funds for the operation of the Division of Air Resource Management. Within the fund is an account that contains all fees under the title V program. Additionally, Florida has a fully approved title V operating permit program at Chapter 62–213 F.A.C.<sup>26</sup> and Section 403.0872, Florida Statutes, that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Florida's State rules and practices adequately provide for permitting fees related to the 2012 Annual PM<sub>2.5</sub> NAAQS, when necessary. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submissions with respect to section 110(a)(2)(L).

**13. 110(a)(2)(M) Consultation and Participation by Affected Local Entities:** This element requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Florida coordinates with local governments affected by the SIP. Florida's SIP submission includes a description of the public participation process for SIP development. Florida has consulted with local entities for the development of transportation conformity and has worked with the FLMs as a requirement of the regional haze rule. Section 403.061(21), Florida Statutes, authorizes FDEP to “[a]dvise, consult, cooperate and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department.” Section 403.061(21), Florida Statutes, is one way that the State meets the requirements of this element as described further below. More specifically, Florida adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air

<sup>26</sup> Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

quality planning in nonattainment and maintenance areas. Required partners covered by Florida's consultation procedures include Federal, state and local transportation and air quality agency officials. The state and local transportation agency officials are most directly impacted by transportation conformity requirements and are required to provide public involvement for their activities including the analysis demonstrating how they meet transportation conformity requirements. Also, FDEP has agreements with eight county air pollution control agencies (Duval, Orange, Hillsborough, Pinellas, Sarasota, Palm Beach, Broward, and Miami-Dade) that delineate the responsibilities of each county in carrying out Florida's air program, including the Florida SIP. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with affected local entities related to the 2012 Annual PM<sub>2.5</sub> NAAQS when necessary.

#### V. Proposed Action

With the exception of interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 and 2). EPA is proposing to approve Florida's infrastructure submission submitted on December 14, 2015, for the 2012 Annual PM<sub>2.5</sub> NAAQS for the above described infrastructure SIP requirements. EPA is proposing to approve Florida's infrastructure SIP submission for the 2012 Annual PM<sub>2.5</sub> NAAQS because the submission is consistent with section 110 of the CAA.

#### VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 20, 2016.

**Heather McTeer Toney,**  
Regional Administrator, Region 4.

[FR Doc. 2016-18013 Filed 7-29-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2014-0291, FRL-9949-57-Region 1]

### Air Plan Approval; Maine: Prevention of Significant Deterioration; PM<sub>2.5</sub>

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine relating to the regulation of fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometer, generally referred to as "PM<sub>2.5</sub>") within the context of Maine's Prevention of Significant Deterioration (PSD) program. EPA is also proposing to approve other minor changes to Maine's PSD program. Actions related to this proposed rule are being taken in accordance with the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before August 31, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2014-0291 at <http://www.regulations.gov>, or via email [bird.patrick@epa.gov](mailto:bird.patrick@epa.gov). For comments submitted at [Regulations.gov](http://www.Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.Regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Patrick Bird, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912; telephone number: (617) 918–1287; email address: [bird.patrick@epa.gov](mailto:bird.patrick@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: July 5, 2016.

**H. Curtis Spalding,**  
Regional Administrator, EPA New England.  
[FR Doc. 2016–17829 Filed 7–29–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2016–0304; FRL–9949–71–Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compounds Emissions From Fiberglass Boat Manufacturing Materials

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve the

state implementation plan (SIP) revision submitted by the State of Maryland for the purpose of establishing Maryland's adoption of the requirements in EPA's control technique guidelines (CTG) for fiberglass boat manufacturing materials. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by August 31, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0304 at <http://www.regulations.gov>, or via email to [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Gavin Huang, (215) 814–2042, or by email at [huang.gavin@epa.gov](mailto:huang.gavin@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: July 15, 2016.

**Shawn M. Garvin,**  
Regional Administrator, Region III.  
[FR Doc. 2016–17808 Filed 7–29–16; 8:45 am]  
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2016–0119; FRL–9948–25–Region 9]

#### Approval of California Air Plan Revisions, Modoc County Air Pollution Control District, Permit Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Modoc County Air Pollution Control District (MCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern MCAPCD's administrative and procedural requirements to obtain preconstruction permits that regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are proposing to approve these local rules under the CAA.

**DATES:** Any comments on this proposal must arrive by August 31, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0119 at <http://www.regulations.gov>, or via email to [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Ya-Ting (Sheila) Tsai, EPA Region IX, (415) 972-3328, [Tsai.Ya-Ting@epa.gov](mailto:Tsai.Ya-Ting@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA. This proposal addresses the following local rules: 2.3, 2.5, 2.7, and 2.10. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on a particular rule, we may adopt as final those rules that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 15, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2016-18010 Filed 7-29-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2015-0521; FRL-9949-92-Region 4]

### Air Plan Approval; Kentucky; Revisions to Louisville Definitions and Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On March 22, 2011, and May 3, 2012, the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), submitted revisions to the Kentucky State Implementation Plan (SIP) on behalf of the Louisville Metro Air Pollution Control District (District). At this time, the Environmental Protection Agency (EPA) is proposing to approve several portions of the submissions that modify the District's air quality regulations as incorporated into the SIP. The revisions to the regulatory portion of the SIP that EPA is proposing to approve pertain to changes to the District's air quality standards for lead (Pb), particulate matter (both PM<sub>2.5</sub> and PM<sub>10</sub>), ozone (O<sub>3</sub>), nitrogen dioxide (NO<sub>2</sub>), and sulfur dioxide (SO<sub>2</sub>) to reflect the National Ambient Air Quality Standards (NAAQS), definitional changes, and regulatory consolidation. EPA is proposing to approve these portions of the SIP revisions because the Commonwealth has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act). EPA will act on the other portions of KDAQ's March 22, 2011, and May 3, 2012, submittals in a separate action.

**DATES:** Written comments must be received on or before August 31, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2015-0521 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary

submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

### FOR FURTHER INFORMATION CONTACT:

Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8726. Mr. Wong can be reached via electronic mail at [wong.richard@epa.gov](mailto:wong.richard@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS to protect public health and welfare. The CAA requires periodic review of the air quality criteria—the science upon which the standards are based—and the standards themselves. EPA's regulatory provisions that govern the NAAQS are found at 40 CFR 50—*National Primary and Secondary Ambient Air Quality Standards*. In this rulemaking, EPA is proposing to approve portions of the revisions to the Jefferson County air quality regulations<sup>1</sup> in the Kentucky SIP, submitted by the Commonwealth on March 22, 2011, and May 3, 2012. The March 22, 2011, submission revises Jefferson County Regulation 1.02—*Definitions* and consolidates Regulations 3.02—*Applicability of Ambient Air Quality Standards*; 3.03—*Definitions*; 3.04—*Ambient Air Quality Standards*; and 3.05—*Methods of Measurement* into Regulation 3.01—*Ambient Air Quality Standards* (currently entitled *Purpose of Standards and Expression of Non-Degradation Intention* in the SIP) by removing Regulations 3.02 through 3.05 and expanding and retitling Regulation 3.01. This submission also seeks to revise Regulation 1.06—*Source Self-Monitoring and Reporting* and Regulation 1.07—*Emissions During*

<sup>1</sup> In 2003, the City of Louisville and Jefferson County governments merged and the “Jefferson County Air Pollution Control District” was renamed the “Louisville Metro Air Pollution Control District.” However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading “Air Pollution Control District of Jefferson County.” Thus, to be consistent with the terminology used in the SIP, EPA refers throughout this notice to regulations contained in Jefferson County portion of the Kentucky SIP as the “Jefferson County” regulations.

*Startups, Shutdowns, Malfunctions and Emergencies.* EPA is not taking action on the proposed changes to Regulation 1.06 at this time. EPA approved the revision to Regulation 1.07 on June 10, 2014. *See* 79 FR 33101. The May 3, 2012, submission builds on the revisions to Regulation 3.01 proposed in the March 22, 2011, submission by updating the Jefferson County air quality standards for Pb, PM<sub>2.5</sub>, PM<sub>10</sub>, O<sub>3</sub>, NO<sub>2</sub>, and SO<sub>2</sub> to reflect the NAAQS, reordering the sections within the regulation, and making several textual modifications. The May 3, 2012, submission also seeks to remove the Ford Motor Company NO<sub>x</sub> Reasonably Available Control Technology (RACT) permit from the SIP and replace it with a Title V permit; EPA is not taking action on the proposed permit substitution at this time. The 2011 and 2012 SIP submittals can be found in the Docket for this proposed rulemaking at [www.regulations.gov](http://www.regulations.gov) and are summarized below.

## II. EPA's Analysis of Kentucky's SIP Revisions

### a. Definitions and Regulatory Consolidation—March 22, 2011, Submittal

The March 22, 2011, SIP submission revises Regulation 1.02 by adding, removing, and modifying definitions and consolidates Regulations 3.02, 3.03, 3.04, and 3.05 into Regulation 3.01 by removing Regulations 3.02 through 3.05 and expanding Regulation 3.01.

EPA is proposing to approve all of the changes to Regulation 1.02<sup>2</sup> except for the addition of definitions for the terms “acute noncancer effect,” “cancer,” “carcinogen,” and “chronic noncancer effect,” because EPA approves only definitions that relate to the attainment and maintenance of the NAAQS. The remainder of the changes to Regulation 1.02 consist of updates to the definitions to make them consistent with definitions used by EPA; removal of definitions that are no longer used in the District's regulations; clarification of the definitions of “ambient air,” “emission standard,” and “malfunction”; and addition of definitions for “bypass,” “excess emissions,” “preventable upset

condition,” “toxic air contaminant,” “upset condition,” and “welfare.”

Specifically, an additional sentence has been added to the definition of “ambient air” to reflect computer dispersion modeling guidance provided by EPA regarding public access to private property that is not under the control of the stationary source from which emissions under study originate. The definition of “emission standard” was modified to provide examples of what makes an emission standard legally enforceable (namely, federal, state, or local law or regulation, District permit, or Board Order) and to recognize that an opacity limit is an emission standard. The definition of “malfunction” has been revised to add the qualification that the equipment failure causes, or is likely to cause, emissions that exceed an applicable emission standard. Definitions have been added for the terms “bypass,” “preventable upset condition,” and “upset condition,” which are used in Regulation 1.07, a part of the federally-approved SIP. The definition of “excess emissions” was added to provide clarity as to the requirements in 401 KAR 63:020. The definition of “welfare,” taken from section 302(h) of the CAA, has been added to clarify which types of harmful effects from the emissions of toxic air contaminants are prohibited. The definition of “toxic air contaminant” has been added to differentiate between the specific “hazardous air pollutant” (HAP) list pursuant to section 112 of the Clean Air Act and the specific “toxic air pollutant” lists pursuant to Kentucky regulations 401 KAR 63:021 (11–11–86) and 401 KAR 63:022 (11–11–86). The District has also exempted from the definition of “volatile organic compound” five additional organic compounds that the EPA, on November 29, 2004, exempted from its corresponding definition at 40 CFR 51.100(s). *See* 69 FR 69290, 69 FR 69298. Minor clarifications were also made to the definitions of “new affected facility” and “process.” Several other definitions were modified for clarity or for consistency with EPA definitions or were simply renumbered.

EPA is also proposing to approve the changes to Regulation 3.01 (to the extent that they are not superseded by changes in the May 3, 2012, submittal)<sup>3</sup> and the removal of Regulations 3.02 through

3.05. Regulations 3.02 through 3.05 were incorporated into Regulation 3.01.

EPA believes that these proposed changes to the regulatory portion of the SIP are consistent with section 110 of the CAA and meet the regulatory requirements pertaining to SIPs. Pursuant to CAA section 110(l), the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. With respect to the District's addition of exemptions from the definition of “volatile organic compound,” the change is approvable under section 110(l) because it reflects changes to federal regulations based on findings that the exempted compounds are negligibly reactive.

EPA is not taking action on the changes to Regulations 1.06 identified in the March 22, 2011, SIP submission.

### b. Updated NAAQS—May 3, 2012, Submittal

The May 3, 2012, submission builds on the revisions to Regulation 3.01 proposed in the March 22, 2011, submission by updating the District's ambient air quality standards to reflect the NAAQS for Pb, PM<sub>2.5</sub>, PM<sub>10</sub>, O<sub>3</sub>, NO<sub>2</sub>, and SO<sub>2</sub>, reordering the sections within the regulation, and making several textual modifications. The updates to the air quality standards are discussed in further detail below.

#### i. Pb

On November 12, 2008, EPA promulgated a new 1-hour primary and secondary NAAQS for Pb at a level of 0.15 micrograms per cubic meter (µg/m<sup>3</sup>), based on a rolling 3-month average. *See* 73 FR 66964. Accordingly, in the May 3, 2012, SIP submission, Jefferson County revised Regulation 3.01 to update its air quality standards for Pb to be consistent with the NAAQS promulgated by EPA in 2008.

#### ii. Particulate Matter

On October 17, 2006, EPA revised the 24-hour primary and secondary PM<sub>2.5</sub> NAAQS to 35 µg/m<sup>3</sup>, based on the 98th percentile of 24-hour PM<sub>2.5</sub> concentrations averaged over three years, and revoked the annual PM<sub>10</sub> NAAQS. *See* 71 FR 61144. Accordingly, in the May 3, 2012, SIP submission, Jefferson County revised Regulation 3.01 to update its primary air quality standard for particulate matter to be

<sup>2</sup> Among the changes to Regulation 1.02 which EPA is proposing to approve are changes that the District adopted in 2001 and 2005. The District refers to the version of Regulation 1.02 which it adopted in 2001 as “Version 10.” The District refers to the version of Regulation 1.02 which it adopted in 2005 as “Version 11.” If EPA's proposed approval of changes to Regulation 1.02 is finalized, the text of the regulation in the SIP will reflect Version 11.

<sup>3</sup> The District refers to the revised version of Regulation 3.01 in its March 22, 2011, submittal as “Version 4” and the revised version of Regulation 3.01 in its May 3, 2012, submittal as “Version 5.” If EPA's proposed approval of changes to Regulation 3.01 is finalized, the text of the regulation in the SIP will reflect Version 5.

consistent with the NAAQS promulgated by EPA in 2006.<sup>4</sup>

iii. O<sub>3</sub>

On July 18, 1997, EPA revoked the 1-hour primary NAAQS for O<sub>3</sub>. See 62 FR 38856. On March 27, 2008, EPA promulgated a new 8-hour primary and secondary NAAQS for O<sub>3</sub> at a level of 0.075 parts per million (ppm), based on an annual fourth-highest daily maximum 8-hr concentration averaged over three years. See 73 FR 16483. Accordingly, in the May 3, 2012, SIP submission, Jefferson County revised Regulation 3.01 to update its air quality standards for O<sub>3</sub> to be consistent with the NAAQS promulgated by EPA in 2008.

iv. NO<sub>2</sub>

On February 9, 2010, EPA promulgated a new 1-hour primary NAAQS for NO<sub>2</sub> at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. See 75 FR 6474. Accordingly, in the May 3, 2012, SIP submission, Jefferson County revised Regulation 3.01 to update its primary air quality standard for NO<sub>2</sub> to be consistent with the NAAQS promulgated by EPA in 2010.

v. SO<sub>2</sub>

On June 22, 2010, EPA promulgated a revised primary SO<sub>2</sub> NAAQS to an hourly standard of 75 ppb, based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations, and revoked the 24-hour SO<sub>2</sub> NAAQS. See 75 FR 35520. Accordingly, in the May 3, 2012, SIP submission, Jefferson County revised Regulation 3.01 to update its primary air quality standards for SO<sub>2</sub> to be consistent with the NAAQS promulgated by EPA in 2010.

EPA has reviewed the revisions to Regulation 3.01 in the May 3, 2012, SIP submission, including the NAAQS updates for Pb, particulate matter, O<sub>3</sub>, NO<sub>2</sub>, and SO<sub>2</sub>, and has made the preliminary determination that these changes are consistent with the CAA.

### III. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with

requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Jefferson County Regulation 1.02—*Definitions* (except for the definitions of “Acute noncancer effect,” “Cancer,” “Carcinogen,” and “Chronic noncancer effect”) and Regulation 3.01—*Ambient Air Quality Standards*. EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the Region 4 office (see the **ADDRESSES** section of this preamble for more information).

### IV. Proposed Action

EPA is proposing to approve the portions of the Commonwealth of Kentucky’s March 22, 2011, and May 3, 2012, SIP revisions identified in section II, above, because they are consistent with the CAA.

### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Sulfur dioxide, Reporting and recordkeeping requirements.

Dated: July 20, 2016.

**Heather McTeer Toney,**

*Regional Administrator, Region 4.*

[FR Doc. 2016–18011 Filed 7–29–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R08–OAR–2016–0107; FRL–9949–98–Region 8]

### Approval and Promulgation of Air Quality Implementation Plans; Interstate Transport for Utah

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to take action on portions of six submissions from the State of Utah that are intended to demonstrate that the State Implementation Plan (SIP) meets certain interstate transport requirements of the Clean Air Act (Act or CAA). These submissions address the 2006 and 2012 fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS), 2008 ozone NAAQS, 2008

<sup>4</sup> On January 15, 2013, EPA revised the primary annual PM<sub>2.5</sub> NAAQS to 12 µg/m<sup>3</sup>, based on annual mean PM<sub>2.5</sub> concentrations averaged over three years. See 78 FR 3086. Since Jefferson County’s May 3, 2012, submission preceded EPA’s promulgation of the new annual standard, an update reflecting the new NAAQS was not included as part of SIP revision.



lead (Pb) NAAQS, 2010 sulfur dioxide (SO<sub>2</sub>) NAAQS and 2010 nitrogen dioxide (NO<sub>2</sub>) NAAQS. Specifically, the EPA is proposing to approve interstate transport prong 4 for the 2008 Pb and 2010 SO<sub>2</sub> NAAQS, and proposing to disapprove prong 4 for the 2006 PM<sub>2.5</sub>, 2008 ozone, 2010 NO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS.

**DATES:** Comments must be received on or before August 31, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2016-0107 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Adam Clark, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. (303) 312-7104, [clark.adam@epa.gov](mailto:clark.adam@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

*What should I consider as I prepare my comments for EPA?*

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information

claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

##### **II. Background**

On September 21, 2006, the EPA revised the primary 24-hour NAAQS for PM<sub>2.5</sub> to 35 micrograms per cubic meter (µg/m<sup>3</sup>) (71 FR 61144, Oct. 17, 2006). On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards to 0.075 parts per million (ppm) (73 FR 16436, Mar. 27, 2008). On October 15, 2008, the EPA revised the level of the primary and secondary Pb NAAQS to 0.15 µg/m<sup>3</sup> (73 FR 66964, Nov. 12, 2008). On January 22, 2010, the EPA promulgated a new 1-hour primary NAAQS for NO<sub>2</sub> at a level of 100 parts per billion (ppb) while retaining the annual standard of 53 ppb (75 FR 6474, Feb. 9, 2010). The secondary NO<sub>2</sub> NAAQS remains unchanged at 53 ppb. On June 2, 2010, the EPA promulgated a revised primary 1-hour SO<sub>2</sub> standard at 75 ppb (75 FR 35520, June 22, 2010). Finally, on December 14, 2012, the EPA promulgated a revised annual PM<sub>2.5</sub> standard by lowering the level to 12.0 µg/m<sup>3</sup> and retaining the 24-hour PM<sub>2.5</sub> standard at a level of 35 µg/m<sup>3</sup> (78 FR 3086, Jan. 15, 2013).

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of

section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as the EPA may prescribe. Section 110(a)(2) requires states to address structural SIP elements such as monitoring, basic program requirements, and legal authority that are designed to provide for implementation, maintenance, and enforcement of the NAAQS. The SIP submission required by these provisions is referred to as the “infrastructure” SIP. Section 110(a) imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances.

CAA section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state (known as the “good neighbor” provision). The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interfere with maintenance). Section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4).

In this action, the EPA is addressing prong 4 with regard to the 2006 and 2012 PM<sub>2.5</sub>, 2008 ozone, 2008 Pb, 2010 SO<sub>2</sub> and 2010 NO<sub>2</sub> NAAQS. The EPA addressed prongs 1 and 2 for the 2008 ozone and 2008 Pb NAAQS in a proposed action published May 10, 2016 (81 FR 28807), and intends to finalize that action in conjunction with the actions in this proposed rule in one joint, final rulemaking. The EPA is addressing prong 3 for the applicable NAAQS in a separate action proposed April 26, 2016 (81 FR 24525), which can be found in regulations.gov under the docket EPA-R08-OAR-2013-0561.

##### **III. State Submissions**

The Utah Department of Environmental Quality (Department or UDEQ) submitted the following: A certification of Utah’s infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS on September 21, 2010; a certification of Utah’s infrastructure SIP for the 2008 Pb SIP on January 19, 2012; a certification of Utah’s infrastructure SIP for the 2008



ozone NAAQS and 2010 NO<sub>2</sub> NAAQS on January 31, 2013; a certification of Utah's infrastructure SIP for the 2010 SO<sub>2</sub> NAAQS on June 2, 2013; and a certification of Utah's infrastructure SIP for the 2012 PM<sub>2.5</sub> on December 22, 2015.

Each of these infrastructure certifications addressed all of the required infrastructure elements under section 110(a)(2).<sup>1</sup> As noted above, the EPA is only addressing the 110(a)(2)(D)(i)(II), prong 4 (visibility) element of each of these submissions here; all other infrastructure elements from these certifications are being addressed in separate actions.

In Utah's 2006 PM<sub>2.5</sub> infrastructure certification, UDEQ pointed to SIP language verifying that no Utah sources of emissions interfere with implementation of reasonably attributable visibility impairment (RAVI) SIPs in other states, in accordance with EPA guidance.<sup>2</sup>

In Utah's 2006 PM<sub>2.5</sub>, 2008 ozone, 2010 SO<sub>2</sub>, 2010 NO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS infrastructure certifications, the Department pointed to its Regional Haze SIP (Utah SIP Section XX) to certify that the State meets the visibility requirements of section 110(a)(2)(D)(i)(II). Utah specifically noted in each of these submittals (aside from the 2006 PM<sub>2.5</sub> submittal) that the State had consulted with other states in the Western Regional Air Partnership (WRAP), and that reductions in emissions from Utah were included in the WRAP regional visibility modeling. As explained below, this information is relevant in determining whether Utah's SIP will achieve the emission reductions that the WRAP states mutually agreed are necessary to avoid interstate visibility impacts in Class I areas.<sup>3</sup>

UDEQ addressed visibility for the 2008 Pb NAAQS by pointing to the short distance travelled by Pb emissions, and by noting that there was not a significant source of Pb in Utah within 100 miles of a Class I area.

#### IV. Utah's Regional Haze SIP

As stated in the EPA's September 13, 2013 Infrastructure SIP Guidance Memo

("2013 Guidance"), "[o]ne way in which prong 4 may be satisfied for any relevant NAAQS is through an air agency's confirmation in its infrastructure SIP submission that it has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process."<sup>4</sup>

On May 26, 2011, Utah submitted to the EPA a SIP revision to address the requirements of the regional haze program. The EPA partially approved and partially disapproved Utah's SIP revision on December 14, 2012 (77 FR 74355). In that action, the EPA disapproved Utah's NO<sub>x</sub> and PM<sub>10</sub> Best Available Retrofit Technology (BART) determinations (77 FR 74357), and approved Utah's BART alternative for SO<sub>2</sub>, which relied on the State's participation in the backstop SO<sub>2</sub> trading program.<sup>5</sup>

In response to the EPA's December 14, 2012 partial disapproval, UDEQ submitted further SIP revisions on June 4, 2015, and October 20, 2015, to meet the regional haze requirements for NO<sub>x</sub> and PM<sub>10</sub> BART. Instead of establishing BART controls for NO<sub>x</sub>, Utah's SIP revisions contained an alternative to BART. The revisions also included BART controls for PM<sub>10</sub>.

On July 5, 2016, the EPA finalized action on Utah's June 4, 2015 Regional Haze SIP, approving the PM<sub>10</sub> BART determinations for both the affected sources, the Hunter and Huntington power plants, and disapproving the State's NO<sub>x</sub> BART alternative for these two facilities. The EPA also promulgated a final federal implementation plan (FIP) to address the deficiencies in Utah's NO<sub>x</sub> BART determinations and the associated monitoring, recordkeeping and reporting requirements for both the Hunter and Huntington power plants (81 FR 43894, July 5, 2016).

#### V. EPA's Assessment

The 2013 Guidance states that section 110(a)(2)(D)(i)(II)'s prong 4 requirements can be satisfied by approved SIP provisions that the EPA has found to adequately address a state's contribution to visibility impairment in other states.

<sup>4</sup> See "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)," September 13, 2013, at 33.

<sup>5</sup> EPA's final approval of the "Western Backstop Sulfur Dioxide Trading Program" into the Utah SIP is codified at 40 CFR 52.2320(c)(71)(C) and (D).

The EPA interprets prong 4 to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.<sup>6</sup>

The 2013 Guidance lays out two ways in which a state's infrastructure SIP submittal may satisfy prong 4. As explained above, one way is through a state's confirmation in its infrastructure SIP submittal that it has an EPA approved regional haze SIP in place. In the absence of a fully approved regional haze SIP, a state can make a demonstration in its infrastructure SIP submittal that emissions within its jurisdiction do not interfere with other states' plans to protect visibility. Such a submittal should point to measures in the state's SIP that limit visibility-impairing pollutants and ensure that the resulting reductions conform with any mutually agreed emission reductions under the relevant regional haze regional planning organization (RPO) process.<sup>7</sup>

UDEQ worked through its RPO, the WRAP, to develop strategies to address regional haze. To help states in establishing reasonable progress goals for improving visibility in Class I areas, the WRAP modeled future visibility conditions based on the mutually agreed emissions reductions from each state. The WRAP states then relied on this modeling in setting their respective reasonable progress goals. As a result, we consider emissions reductions from measures in Utah's SIP that conform with the level of emission reductions the State agreed to include in the WRAP modeling to meet the visibility requirement of CAA section 110(a)(2)(D)(i)(II).

With regard to the 2010 SO<sub>2</sub> NAAQS, the EPA proposes to find that the State's implementation of the Western Backstop Sulfur Dioxide Trading Program and the agreed upon SO<sub>2</sub> reductions achieved through that program sufficient to meet the requirements of prong 4.<sup>8</sup> Under 40 CFR

<sup>6</sup> See "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" at 33.

<sup>7</sup> See "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" at 34, and also 76 FR 22036 (April 20, 2011) containing EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP.

<sup>8</sup> Specifically, the State is required to reach its "emissions milestone" for this program by keeping its SO<sub>2</sub> emissions below 141,849 tons/SO<sub>2</sub> in 2018 and each year thereafter.

<sup>1</sup> For discussion of other infrastructure elements, see EPA's "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)," September 13, 2013.

<sup>2</sup> See EPA's "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)," September 25, 2009, at 6.

<sup>3</sup> See "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)," September 13, 2013, at 34.

51.309, certain states, including Utah, can satisfy their SO<sub>2</sub> BART requirements by adopting an alternative program consisting of SO<sub>2</sub> emission milestones and a backstop trading program.<sup>9</sup> Utah Administrative Rules (UAR) R307–250 and R307–150 implement the backstop trading program provisions and the EPA has approved the State's rules, including the SO<sub>2</sub> reduction milestones, as satisfying its regional haze SO<sub>2</sub> obligations.<sup>10</sup> Utah's SIP thus contains measures requiring reductions of SO<sub>2</sub> consistent with what the State agreed to achieve under the WRAP process in order to protect visibility. As a result, EPA is proposing to approve 110(a)(2)(D)(i)(II) prong 4 for the 2010 SO<sub>2</sub> NAAQS.

The EPA is also proposing to approve Utah's prong 4 SIP submittal for the 2008 Pb NAAQS. The EPA agrees with UDEQ's submission, which states that significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source. The State also noted that it does not have any major sources of Pb located within 100 miles of a neighboring state's Class I area. Further, when evaluating the extent to which Pb could impact visibility, the EPA has found Pb-related visibility impacts insignificant (*e.g.*, less than 0.10 percent).<sup>11</sup> The EPA proposes to approve prong 4 for the 2008 Pb NAAQS based on Utah's conclusion that it does not have any significant sources of lead emissions near another state's Class I area and that it, therefore, does not have emissions of Pb that would interfere with the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

The EPA is proposing to disapprove Utah's prong 4 infrastructure SIP submittals for the 2006 PM<sub>2.5</sub>, 2008 ozone, 2010 NO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. The EPA's disapproval of Utah's NO<sub>x</sub> BART determination in our July 5, 2016 final rulemaking included the specific disapproval of the NO<sub>x</sub> control measures the State submitted for the Hunter and Huntington facilities (81 FR 43894, 43902).

As noted, Utah relied on its Regional Haze SIP (Utah SIP Section XX), and specifically its participation in the WRAP, as justification for the approvability of prong 4 for 2006 PM<sub>2.5</sub>, 2008 ozone, 2010 NO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS. Because the Department did not provide an alternative demonstration that its SIP contains

measures to limit NO<sub>x</sub> emissions in accordance with the emission reductions it agreed to under the WRAP,<sup>12</sup> the EPA's disapproval of Utah's NO<sub>x</sub> BART alternative makes Utah's justification insufficient for the NAAQS pollutants impacted by the control of NO<sub>x</sub>. Specifically, NO<sub>x</sub> is a precursor of PM<sub>2.5</sub> and ozone, and is also a term which refers to both NO (nitrogen oxide) and NO<sub>2</sub>. The EPA is therefore proposing to disapprove prong 4 of Utah's infrastructure certifications with regard to the 2006 PM<sub>2.5</sub>, 2008 ozone, 2010 NO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS.

If the EPA disapproves an infrastructure SIP submission for prong 4, as we are proposing for the 2006 PM<sub>2.5</sub>, 2008 Ozone, 2010 NO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS, a FIP obligation will be created. However, since the EPA recently promulgated a FIP for Utah that corrects all regional haze SIP deficiencies (81 FR 43894), there will be no additional practical consequences from the disapproval of UDEQ, the sources within its jurisdiction, or the EPA.<sup>13</sup> The EPA will not be required to take further action with respect to these prong 4 disapprovals, if finalized, because the FIP already in place would satisfy the requirements with respect to prong 4.<sup>14</sup> Additionally, since the infrastructure SIP submission is not required in response to a SIP call under CAA section 110(k)(5), mandatory sanctions under CAA section 179 would not apply because the deficiencies are not with respect to a submission that is required under CAA title I part D.<sup>15</sup>

## VI. Proposed Action

The EPA is proposing to approve portions of Utah's infrastructure certifications which address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(II), and to disapprove portions of other certifications addressing this CAA requirement. The EPA is proposing to approve 110(a)(2)(D)(i)(II) prong 4 for the 2008 Pb and 2010 SO<sub>2</sub> NAAQS. The EPA is also proposing to disapprove 110(a)(2)(D)(i)(II) prong 4 for the 2006 PM<sub>2.5</sub>, 2008 ozone, 2010 NO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS. The EPA is soliciting public comments on this proposed action and will consider public comments received during the comment period.

<sup>12</sup> With the exception of the 2006 PM<sub>2.5</sub> NAAQS, which referenced the State's lack of interference with RAVI.

<sup>13</sup> EPA's September 13, 2013 Infrastructure SIP Guidance, at 34.

<sup>14</sup> *Id.* at 35.

<sup>15</sup> *Id.*

## VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state actions, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes approval of some state law as meeting federal requirements and proposes disapproval of other state law because it does not meet federal requirements; this proposed action does not propose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
  - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
  - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
  - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
  - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
  - Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP does not apply on any Indian reservation land or in any other area where the EPA or an Indian

<sup>9</sup> 40 CFR 51.309.

<sup>10</sup> 77 FR 74355 (Dec. 14, 2012).

<sup>11</sup> EPA's September 13, 2013 Infrastructure SIP Guidance, at 33.

tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 19, 2016.

**Shaun L. McGrath,**

*Regional Administrator, Region 8.*

[FR Doc. 2016-18153 Filed 7-29-16; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 122

[EPA-HQ-OW-2016-0376; FRL-9950-07-OW]

#### Public Notification for Combined Sewer Overflows in the Great Lakes; Public Listening Session; Request for Stakeholder Input

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Request for stakeholder input.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing plans to hold a public “listening session” on September 14, 2016 in Chicago, Illinois to obtain information from the public to help inform development of a new regulation establishing public notification requirements for combined sewer overflow discharges in the Great Lakes. This rulemaking is in response to new requirements included with the 2016 appropriations. EPA is requesting input from the public regarding potential approaches for these new public notification requirements for combined sewer overflow discharges in the Great Lakes through participation in the public listening session and by submitting information in writing at the listening sessions or to the agency directly through email, fax, or mail. The agency is undertaking this outreach to help it shape a future regulatory proposal intended to provide the affected public with information that will help better protect public health.

**DATES:** The session will be held on September 14, 2016. Comments must be received on or before September 23, 2016.

**ADDRESSES:** The public listening session will be held at the Environmental Protection Agency Region 5 Office (Lake Erie Room, Floor 12), 77 West Jackson Boulevard, Chicago, IL 60604-3507. Submit your comments, identified by Docket ID No. EPA-HQ-OW-2016-0378, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>. For details on the public listening session see **SUPPLEMENTAL INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Lisa Biddle, Water Permits Division, Office of Water (4203M), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 202-566-0350; fax number: 202-564-6392; email address: [biddle.lisa@epa.gov](mailto:biddle.lisa@epa.gov). Also see the following Web site for additional information regarding the rulemaking: <https://www.epa.gov/npdes/combined-sewer-overflows-great-lakes-basin>.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Public Listening Session

EPA will hold an informal public listening session to afford an opportunity for the public to provide input on a regulatory action that EPA is considering to establish public notification requirements for combined sewer overflow discharges in the Great Lakes. Brief oral comments (three minutes or less) and written statements

will be accepted at the session. The listening session will be held on September 14, 2016 at 10 a.m. at the Environmental Protection Agency Region 5 Office (Lake Erie Room, Floor 12), 77 West Jackson Boulevard, Chicago, IL 60604-3507. The listening session will continue until all speakers in attendance have had a chance to provide comments or 3 p.m., whichever comes first. If time allows after all comments have been heard, a broader discussion may take place regarding topics identified under Section III, Input on Public Notice Considerations.

##### B. Additional Information and Public Meeting Registration

Prior to the public meeting date, EPA will post any relevant materials to the following Web site: <https://www.epa.gov/npdes/combined-sewer-overflows-great-lakes-basin>. Information posted to the Web site will include any handouts that may be provided at the meeting as well as a web link that participants may use to register for the public meeting in advance. Advanced registration is not required but is requested so that EPA can ensure there is sufficient space and time allotted for those who wish to participate.

## II. Background

The Environmental Protection Agency (EPA) will be proposing a rule to establish public notification requirements for combined sewer overflows (CSOs) to the Great Lakes, as required by Section 425 of the Consolidated Appropriations Act of 2016 (Pub. L. 114-113) (hereafter, referred to as “Section 425”). Section 425 requires EPA to work with the Great Lakes states to create these public notice requirements, and EPA is also seeking public input in the development of these requirements.

#### *Combined Sewer Overflows From Municipal Wastewater Collection Systems*

Municipal wastewater collection systems collect domestic sewage and other wastewater from homes and other buildings and convey it to wastewater treatment plants for proper treatment and disposal. The collection and treatment of municipal sewage and wastewater is vital to the public health in our cities and towns. In the United States, municipalities historically have used two major types of sewer systems. Many municipalities collect domestic sewage in a sanitary sewer system and convey the sewage to a publicly owned treatment works (POTW) for treatment. These municipalities also have separate sewer systems to collect surface

drainage and stormwater, known as “municipal separate storm sewer systems” or “MS4s.” Separate sanitary sewer systems are not designed to collect large amounts of runoff from rain or snowmelt or provide widespread surface drainage, although they typically are built with some allowance for higher flows that occur during storm events to handle minor amounts of stormwater or groundwater that enter the system.

The other type, combined sewer systems, is designed to collect both sanitary sewage and stormwater runoff in a single-pipe system. This type of sewer system provides the primary means of surface drainage carrying rain and snowmelt away from streets, roofs, and other impervious surfaces. Combined sewer systems were among the earliest sewer systems constructed in the United States and were built until the first part of the 20th century.

A combined sewer system collects rainwater and snowmelt runoff, domestic sewage, and industrial wastewater into one pipe. Under normal conditions, it transports all of the wastewater it collects to a sewage treatment plant for treatment. The volume of wastewater can sometimes exceed the capacity of the combined sewer system or treatment plant (e.g., during heavy rainfall events or snowmelt). When this occurs, these systems are designed to divert some of the combined sewage prior to reaching the treatment plant and to discharge untreated or partially treated stormwater and wastewater directly to nearby streams, rivers and other water bodies. These discharge events are referred to as combined sewer overflows or CSOs.

CSOs contain untreated or partially treated human and industrial waste, toxic materials, and debris as well as stormwater. CSO events can be detrimental to human health and the environment because they introduce pathogens, bacteria, and other pollutants to receiving waters, causing beach closures, contaminating drinking water supplies and impairing water quality. Fish and other aquatic populations also can be impacted by the depleted oxygen levels that can be caused by CSOs.

Combined sewer systems serve a total population of about 40 million people nationwide. Most communities with CSOs are located in the Northeast and Great Lakes regions, particularly in Illinois, Indiana, Maine, Michigan, New York, Ohio, Pennsylvania, and West Virginia. Although large cities like New York, Philadelphia, and Atlanta have combined sewer systems, most communities with combined sewer

systems have fewer than 10,000 people. Most combined sewer systems have multiple CSO discharge locations or outfalls, with some larger communities with combined systems having hundreds of CSO outfalls.

#### *Combined Sewer Overflows in the Great Lakes*

There are 184 communities with combined sewer systems serving communities in the United States portion of the Great Lakes and the Great Lakes System (“Great Lakes Basin”).<sup>1</sup> This includes communities in the states of New York, Pennsylvania, Ohio, Michigan, Illinois, Indiana, and Wisconsin. EPA recently summarized available information on the occurrence and volume of discharges from CSOs in the Great Lakes Basin during 2014 (see Report to Congress: Combined Sewers in the Great Lakes (EPA 833-R-16-006)). As summarized in this report, seven states reported 1,482 events where untreated combined stormwater, industrial wastewater, and domestic sewage was discharged from CSOs in the Great Lakes Basin in 2014 and an additional 187 CSO events where partially treated wastewater were discharged. Additional information regarding CSOs in the Great Lakes Basin, including the Report to Congress, is available at <https://www.epa.gov/npdes/combined-sewer-overflows-great-lakes-basin>.

#### *Clean Water Act Regulations That Apply to Combined Sewer Systems*

The Clean Water Act establishes national goals and requirements for maintaining and restoring the nation’s waters. CSO discharges are subject to the technology-based and water quality-based requirements of the Clean Water Act under National Pollutant Discharge Elimination System (NPDES) permits. Technology-based effluent limitations for CSO discharges are based on the application of best available technology economically achievable (BAT) for toxic and nonconventional pollutants and best conventional pollutant control technology (BCT) for conventional

pollutants. BAT and BCT effluent limitations for CSO discharges are determined based on “best professional judgment.” CSO discharges are not subject to permit limits based on secondary treatment requirements that are applicable to POTWs. Permits authorizing discharges from CSO outfalls must include more stringent water quality-based requirements, when necessary, to meet water quality standards (WQS).

#### *CSO Control Policy*

EPA issued the CSO Control Policy on April 19, 1994 (59 FR 18688). The CSO Control Policy “represents a comprehensive national strategy to ensure that municipalities, permitting authorities, WQS authorities, and the public engage in a comprehensive and coordinative effort to achieve cost-effective CSO controls that ultimately meet appropriate health and environmental objectives.” The policy assigns primary responsibility for implementation and enforcement to NPDES permitting authorities and WQS authorities.

The policy also established objectives for CSO communities to: 1) Implement the Nine Minimum Controls and submit documentation on their implementation; and 2) Develop and implement a long-term CSO control plan (LTCP) to ultimately result in compliance with the Clean Water Act, including water quality-based requirements. In describing NPDES permit requirements for CSO discharges, the CSO Control Policy states that the BAT/BCT technology-based effluent limitations “at a minimum include[s] the nine minimum controls.” 59 FR 18696. One of the nine minimum controls is “Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts.” At a minimum, the technology based effluent limitations applicable to CSOs include the nine minimum controls.

#### *Wet Weather Water Quality Act*

In December 2000, as part of the Consolidated Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554), Congress amended the Clean Water Act by adding Section 402(q). This amendment is commonly referred to as the “Wet Weather Water Quality Act of 2000.” It requires that each permit, order, or decree issued pursuant to the Clean Water Act after the date of enactment for a discharge from a municipal combined sewer system shall conform to the CSO Control Policy.

<sup>1</sup> Section 425 specifies in Section 425(a)(4) that the term “Great Lakes” means “any of the waters as defined in the Section 118(a)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1292).” This, therefore, includes Section 118(a)(3)(B), which defines “Great Lakes” as “Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary’s River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);” and Section 118(a)(3)(C), which defines “Great Lakes System” as “all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes.” Collectively, EPA is referring to the Great Lakes and the Great Lakes System as the “Great Lakes Basin.”

*Developing New Requirements for Public Notice of CSO Events in the Great Lakes Basin*

Section 425 requires EPA to work with the Great Lakes states to create public notice requirements for combined sewer overflow discharges to the Great Lakes. Section 425(b)(2) provides that the notice requirements are to address the method of the notice, the contents of the notice, and requirements for public availability of the notice. Section 425(b)(3)(A) provides that at a minimum, the contents of the notice are to include the dates and times of the applicable discharge; the volume of the discharge; and a description of any public access areas impacted by the discharge. Section 425(b)(3)(B) provides that the minimum content requirements are to be consistent for all affected States.

Section 425(b)(4)(A) calls for follow-up notice requirements that provide a description of each applicable discharge; the cause of the discharge; and plans to prevent a reoccurrence of a combined sewer overflow discharge to the Great Lakes consistent with section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) or an administrative order or consent decree under such Act. Section 425(b)(4)(B) provides for annual publication requirements that list each treatment works from which the Administrator or the affected State receive a follow-up notice.

Section 425(b)(5) requires that the notice and publication requirements described in Section 425 shall be implemented by not later than December 18, 2017. However, the Administrator of the EPA may extend the implementation deadline for individual communities if the Administrator determines the community needs additional time to comply in order to avoid undue economic hardship. Finally, Section 425(b)(6) clarifies that “Nothing in this subsection prohibits an affected State from establishing a State notice requirement in the event of a discharge that is more stringent than the requirements described in this subsection.”

EPA is working with the Great Lakes States to identify and evaluate options for implementing Section 425. EPA has also met with various stakeholder groups that represent municipalities, industry practitioners, and environmental organizations to hear each of their perspectives. EPA will continue to meet with interested stakeholder groups throughout the rulemaking process. In addition, the

public “listening session” on September 14, 2016 will provide stakeholders and other members of the public with an opportunity to share their views regarding potential new public notification requirements for CSOs in the Great Lakes Basin.

### III. Input on Public Notice Considerations

EPA and the Great Lake States will consider several options for creating public notice requirements for CSOs in the Great Lakes Basin under Section 425. In general, EPA and the Great Lake States are requesting comment on public notice requirements that provide for:

- Immediate notice of CSO discharge events to local public health officials and drinking water facilities. This notice is intended to alert public health officials and drinking water facilities to specific CSO discharges and support the development of appropriate responses to the discharges.
- Immediate notice of CSO discharge events to the public via text alerts, Web site notice, or other appropriate means. This notice is intended to alert the public to CSO discharges which may allow them to take steps to reduce their potential exposure to pathogens associated with the discharges.
- Immediate notice of CSO discharge events to the NPDES permitting authority. NPDES permits establish requirements to report CSO discharges to the NPDES authority. 40 CFR 122.41(l)(6) provides minimum requirements to report certain CSO discharges to the NPDES authority within 24 hours.
- Annual CSO notice. The annual CSO notice is intended to provide the public with a description of the current performance of their system as well as progress being made to reduce CSOs.

EPA solicits information from the public regarding any aspect of Section 425 of the Consolidated Appropriations Act of 2016, including:

- (1) What means of receiving immediate notice of CSO discharge events is most helpful to the public?
- (2) What should “immediate” mean in this context? How soon after a CSO discharge event commences should the public and local public health agencies be given notice?
- (3) What type of information would be most appropriate for immediate notices? In addition to the statutorily required elements of (i) the dates and times of the applicable discharge; (ii) the volume of the discharge; and (iii) a description of any public access areas impacted by the discharge; what other pieces of information would be beneficial for the public, local public health agencies,

public drinking water providers, etc. to receive as part of the public notice?

(4) What role should local public health agencies have in identifying immediate notification requirements?

(5) How should annual notices be made available to the public?

(6) What information should be included in annual notices and who should prepare the annual notices?

(7) Do EPA’s requirements to notify NPDES permitting authorities under 40 CFR 122.41(l)(4), (6) and (7) have a role in the new public notice requirements?

(8) What regulatory framework is most appropriate for immediate notification requirements? For annual notices?

In addition to participation in the meeting, members of the public may share input through written comments to the public docket (see **ADDRESSES**).

Dated: July 26, 2016.

**Andrew D. Sawyers,**

*Director, Office of Wastewater Management.*

[FR Doc. 2016–18133 Filed 7–29–16; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 160225147–6147–01]

**RIN 0648–BF83**

#### Fisheries of the Exclusive Economic Zone off Alaska; Modifications to Recordkeeping and Reporting Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule that would modify the recordkeeping and reporting requirements for the groundfish fisheries in the Gulf of Alaska and the Bering Sea/Aleutian Islands management areas. This proposed rule is organized into four actions. Under the first action, NMFS would implement a requirement for tender vessel operators to use the applications software “tLandings” to prepare electronic landing reports. This action is necessary to improve timeliness and reliability of landing reports for catcher vessels delivering to tender vessels for use in catch accounting and inseason management. Under the second action, NMFS would

modify the definition of a buying station. This action is necessary to clarify the different requirements that apply to tender vessels and land-based buying stations. Under the third action, NMFS would remove the requirement for buying stations to complete the buying station report because this report is no longer necessary. Under the fourth action, NMFS would revise the definition of a mothership to remove unnecessary formatting without changing the substance of the definition. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), and other applicable laws.

**DATES:** Submit comments on or before August 31, 2016.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2016–0021, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0021](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0021), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personally identifiable information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) (collectively referred to as the “Analysis”) and the Categorical Exclusion prepared for this proposed rule may be obtained from <http://>

[www.regulations.gov](http://www.regulations.gov) or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS (see **ADDRESSES**) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Keeley Kent, 907–586–7228.

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority for Action**

NMFS Alaska Region manages the U.S. groundfish fisheries in the Exclusive Economic Zone off Alaska under the BSAI FMP and the GOA FMP. The FMPs were prepared by the North Pacific Fishery Management Council, under authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act) and other applicable laws, and approved by the Secretary of Commerce. NMFS is authorized under both groundfish FMPs to implement recordkeeping and reporting requirements that are necessary to provide the information needed to conserve and manage the groundfish fisheries off Alaska. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. Recordkeeping and reporting regulations appear at § 679.5.

##### **Background**

This proposed rule is organized into four actions. Under the first action, NMFS would implement a requirement for tender vessel operators to use tLandings. Under the second action, NMFS would modify the definition of buying station so that tender vessels and land-based buying stations are differentiated under the regulations. Under the third action, NMFS would remove the requirement for buying stations to complete the buying station report. Under the fourth action, NMFS would modify the definition of a mothership to simplify the unnecessary paragraph formatting. The following sections of the preamble describe: (1) Background on the Interagency Electronic Reporting System, tendering, and tLandings; (2) the need for action; and (3) the proposed rule and its anticipated effects.

##### **Interagency Electronic Reporting System**

The Interagency Electronic Reporting System (IERS) is a collaborative program for reporting commercial fishery

landings administered by NMFS, Alaska Department of Fish and Game (ADF&G), and the International Pacific Halibut Commission. The IERS consists of three main components: eLandings—a web-based application for immediate harvest data upload from internet-capable vessels or processors; seaLandings—a desktop application for vessels at sea without internet capability which transmits reports by satellite phone; and tLandings—a software application for tender vessels that records landings data on a USB flash drive (“thumb-drive”) that includes all of the data fields required under IERS. Current regulations require that landing reports be submitted via eLandings, or seaLandings for halibut, sablefish, and crab fisheries (§ 679.5(e)(5)). NMFS requires all shoreside or floating processors that hold a Federal processing permit (FPP) to use eLandings or other NMFS-approved software to submit landing reports for all groundfish species. All motherships holding a Federal fisheries permit (FFP) are required to enter landing information in eLandings, unless an internet connection is not available. seaLandings may be used when an internet connection is not available. Catcher/processors with an FFP are required to use eLandings, or seaLandings (when no internet connection is available), to submit Daily Production Reports.

NMFS has identified electronic reporting through eLandings as a way to improve data quality, automate processing of data, improve the process for correcting or updating information, allow for the availability of more timely data for fishery managers, and reduce duplicative reporting of similar information to multiple agencies.

##### **Tendering**

A tender vessel is defined under § 679.2 as a vessel that is used to transport unprocessed fish or shellfish received from another vessel to an associated processor. An associated processor is defined under § 679.2 as having a contractual relationship with a buying station to conduct groundfish buying station activities for that processor. The contractual relationship in the Federal regulations creates joint responsibility for recordkeeping and reporting. A tender vessel is also included under the definition of a buying station, which receives unprocessed groundfish from a vessel for delivery to a shoreside processor, stationary floating processor, or mothership, but does not process fish (§ 679.2). Buying stations include both tender vessels and land-based entities.

The practice of tendering allows a fishing vessel to deliver its catch to another vessel and resume fishing without the delay associated with traveling to port and returning to the fishing area. One tender vessel can service multiple fishing vessels, depending on its capacity and the regulations that limit tendering. For more information on tendering, see Section 1.5 of the Analysis.

Since tender vessels transport harvested fish to a processor and do not process the fish themselves, they are currently not required to participate in the IERS. Currently, tender vessels provide a written landing report for each delivery, commonly known as a “fish ticket” to the processor on delivery; the processor then prepares a cumulative landing report in eLandings. Although there is an optional field in the eLandings landing report for tender vessel identification number, processors are not required to identify tender vessel deliveries. If the tender vessel is not identified, NMFS cannot distinguish a tender vessel delivery to a processor from a vessel delivery to a processor.

The State of Alaska (State) allows vessels to contract with other vessels to receive fish from some fisheries managed by the State and deliver that fish to processors located within the State’s jurisdiction. Unlike tenders, these vessels do not have a contract or association with a processor to transport unprocessed fish received from another vessel to a processor. Vessels engaging in this activity are called “transporters” under State regulations. The State created the statutory and regulatory authority for vessels to operate as transporters in 2003. Transporters must have a transporter permit from ADF&G, and, under a contractual arrangement with the vessel, are considered agents of the vessel. Because of the requirement in § 679.2 for a contractual relationship with a processor, a vessel acting as a transporter under the State definition would not be categorized as a tender vessel under the Federal regulations. Therefore, none of the requirements that apply to tenders would apply to vessels operating as a transporter under State regulations, and the provisions of this proposed rule that apply to tenders would not apply to transporters. See Sections 1.5.3 and 1.6.1 of the Analysis for further description and discussion of transporters.

#### *tLandings*

tLandings is a computer application used on computers onboard tender vessels. tLandings was developed for use on tender vessels without internet access. The tLandings application is

loaded onto a thumb drive and configured with a list of the authorized users, the processor’s vessel list, and a species list, and includes the option for the processor to add a price list. The tender vessel operator would create the landing reports and store them on the thumb drive. Once the tender vessel trip is completed, the tender vessel operator would provide the thumb drive to the processor for upload into the eLandings repository database. The processor would then upload the eLandings landing report to a NMFS central server. This system requires one-time data entry on the tender vessel and the information is transferred to the processor, and then to the agency via eLandings. Digital harvest reports improve catch accounting and streamline the process. Though the use of tLandings is currently voluntary, a growing number of tender vessels and processors are using tLandings (see Section 1.4 of the Analysis).

Under the current regulations, the processor is responsible for reporting the information provided by the tender vessel on the fish ticket. The processor provides a booklet of fish tickets to associated tender vessels with the processor identification number printed on them. The tender vessel operator completes the fish ticket for each delivery and returns the fish tickets to the processor at the time of offload. Should the tender vessel submit an incorrect fish ticket, the processor would be responsible for tracking down the tender vessel to correct the information.

In November 2015, ADF&G adopted State regulations to require the use of tLandings for tender vessels who have submitted more than 2,000 salmon fish tickets or bought over 20 million pounds of salmon in 2012, 2013, or 2014, and for all groundfish delivered to tender vessels. ADF&G estimated that roughly 55 tender vessels would meet the threshold for the new regulation, but many already used tLandings for halibut and sablefish, salmon, and groundfish reporting. The State tLandings requirement became effective January 2016.

#### **Need for Action**

When a tender vessel receives catch from a vessel, the tender vessel operator completes a paper fish ticket. Once the transfer is complete, the vessel operator signs the paper fish ticket acknowledging the transfer of catch and agreeing to the information provided. When the tender vessel delivers the catch to the processor, the tender vessel operator provides the paper fish ticket to the processor. The processor then

verifies the information and manually enters the fish ticket data into eLandings to create a landing report. Landing reports are required to be submitted to NMFS by noon of the day following the delivery. The processor’s manual entry of fish ticket data, including review and correction of the data, sometimes makes it difficult for the processor to meet this submission deadline and can delay the availability of the tender vessel landing data to NMFS.

The lack of electronic data from tenders reduces data reliability and timeliness. Additionally, with the lack of electronic data from tenders, NMFS is unable to differentiate deliveries to tender vessels from deliveries to processors unless the processor voluntarily enters the tender vessel identification number in the eLandings report. NMFS has, in the past, raised concerns about landings data reliability and timeliness in analyses presented to the Council and fishery participants.

Data timeliness and reliability are paramount to effective inseason management. Almost real-time access to the data is particularly important for fast-paced fisheries that operate under small total allowable catch limits, constraining prohibited species catch (PSC) limits, or that have inconsistent and unpredictable levels of fishing effort. NMFS requires timely data for the successful management of these fisheries. In addition, NMFS uses timely data for any catch share program that involves transferable allocations of target species. NMFS inseason management and Office of Law Enforcement (OLE) rely on the data provided through eLandings to monitor compliance with requirements that quota holders not exceed their allocations. Management and enforcement of PSC-limited and catch share fisheries become more difficult when data access is delayed. For more information on the potential implications of the lack of electronic data entry on management, see Sections 1.3 and 2.4 of the Analysis.

This proposed rule would require tenders to use tLandings. The mandatory use of tLandings would provide a streamlined data entry mechanism that ensures efficient, precise data transmission. This action is necessary to enable NMFS to identify tender vessel deliveries and to provide reliable, expeditious data for catch accounting and inseason management of fisheries with tender vessel deliveries.



**This Proposed Rule and the Anticipated Effects***Action 1: Require Tender Vessel Operators To Use tLandings*

Under Action 1 of this proposed rule, tender vessel operators would be required to use tLandings to prepare electronic landing reports. Action 1 is necessary to improve data quality for deliveries made to tender vessels.

Under this proposed rule, the eLandings user (defined as a representative of a processor under § 679.2, *i.e.* an employee) would be required to supply the tender vessel operator with a “configured” tLandings application for computer installation prior to the tender vessel operator taking delivery of fish or shellfish from a fishing vessel. A configured tLandings application would be preloaded with a list of the authorized users, the processor’s vessel list, a species list, and other useful data for the associated processor and tender vessel operator. The tender vessel operator would record the required information in tLandings for each delivery the tender vessel accepted. Once the tender vessel delivered the catch to the associated processor, the user (as defined at 679.2) would be required to complete the eLandings landing report by uploading the tLandings data through the Processor Tender Interface component of eLandings by 1200 hours, Alaska local time, of the day following the completion of the delivery. The processor would be subject to the time limits for data submission specified under § 679.5(e). Different time limits for data submission would apply depending on the type of processor, (*i.e.*, there are differing submission time limit requirements for shoreside processors or stationary floating processors, motherships, individual fishing quota (IFQ) registered buyers, or registered crab receivers).

The tender vessel operator would be responsible for completing the tLandings landing report and submitting it to the processor. This would create a joint responsibility for the tLandings landing report information for the tender vessel operator and the processor. Section 1.9.4 of the Analysis provides additional detail on the monitoring and enforcement of the tLandings requirements.

Under this proposed rule, the general costs associated with requiring tender vessels to enter landing reports into tLandings are mainly attributable to equipment and training. NMFS assumes that tender vessels are likely to pay the costs for equipment and training (see Section 1.9.1.1 of the Analysis). To use

tLandings, each tender vessel would need a laptop computer with a numeric key pad, a basic laser printer with ink cartridges and paper, a magstripe reader, and thumb drives that contain the tLandings application. NMFS estimates that using tLandings would increase the annual cost to tender vessels from \$1,000 to \$2,300. See Section 1.9.1.1 of the Analysis for more information on the estimated cost of equipment.

Operating the tLandings application requires some training and practice for both the tender vessel operators and processor staff. NMFS assumes that the initial and ongoing training costs to use tLandings would likely be shared by NMFS and the processor using tender vessels. NMFS may bear an initial cost for training processors on the use of tLandings, after which it would be the processors’ responsibility to provide training for their tender vessel operators. NMFS estimates that it would require a full day of initial training for new tLandings users. Section 1.9.1.2 of the Analysis describes projected training costs in more detail.

Under this proposed rule, the tLandings requirement would reduce data entry errors and the time required to manually enter fish tickets. Requiring tLandings would reduce the likelihood of a processor needing to recall a tender vessel if a fish ticket is illegible or incorrectly filled out. Additionally, requiring tLandings would eliminate the need for comprehensive manual data entry by processor staff, simplifying and expediting the data transmission to NMFS. Because processors are already subject to an eLandings reporting requirement, processors likely have staff proficient with the IERS software, so there would be little additional training required for the tLandings requirement.

The ability for processors to upload the completed data from tLandings into IERS through eLandings means that landing data can be provided to NMFS more quickly and with greater reliability than the current paper-based reporting system. As Section 1.9 of the Analysis describes, the use of electronic data greatly reduces the likelihood of data entry errors and ensures data consistency and reliability, thereby reducing the costs and time required for NMFS or ADF&G staff to correct and verify data. Additionally, the data provided by the tLandings requirement would allow the Observer Program to more effectively identify deliveries to tenders for purposes of observer deployment to vessels within the partial coverage category.

Section 1.4 of the Analysis describes that some tender vessels are voluntarily using tLandings to report federal

groundfish landings, and many are required to use tLandings to report landings made in State-managed fisheries. Therefore, the total additional costs and burden on tender vessel operations may be limited. Section 1.5.1 of the Analysis estimates that 30 tender vessels received Federal groundfish in the BSAI and GOA in 2015. Those tender vessels delivered to eight processors. Many tender vessels that operate in the Federal groundfish fisheries also operate in the State groundfish fisheries. Under State regulations these tender vessels are already subject to a State tLandings requirement and may already be equipped with tLandings from ADF&G. In 2015, 21 of the 30 tender vessels also took delivery of State groundfish. NMFS expects that there would be minimal additional cost for these tender vessels to also use tLandings for Federal groundfish. The eight processors that received Federal groundfish from tender vessels in 2015 also received State groundfish from tender vessels; therefore the effect of this proposed rule on processors is estimated to be minimal. Based on the most recent data from 2015, the tLandings requirement under this proposed rule would affect nine tender vessels.

Under this proposed rule, NMFS would add a data field to the tLandings application to track the location of tenders when they take deliveries from vessels. The tender vessel operator would be required to report the vessel’s latitude and longitude at the time of each vessel delivery. This data is necessary to improve information on tender vessel activity in the GOA and vessel delivery patterns when delivering to a tender vessel as opposed to a processor. This data field is not expected to add a reporting burden on tender vessel operators.

*Action 2: Differentiate Tender Vessels From Buying Stations*

Under Action 2 of this proposed rule, NMFS would revise the definitions of tender vessel and buying station for improved clarity. Currently, under § 679.2, the definition of a buying station includes both tender vessels and land-based buying stations. Under § 679.2, tender vessel is separately defined as a vessel used to transport unprocessed fish or shellfish received from another vessel to an associated processor. While many recordkeeping and reporting requirements that apply to buying stations should include both tender vessels and land-based buying stations, not all of the reporting requirements that apply to buying stations should apply to both tender

vessels and land-based buying stations. Additionally, while a tender vessel may be associated with a shoreside processor, stationary floating processor, or mothership, a land-based buying station is only associated with a shoreside processor. Under Action 2, this proposed rule would revise the definitions of buying station and tender vessel to ensure that the reporting requirements that are applicable to tender vessels and land-based buying stations are clear to the public. Action 2 would not revise or modify the specific provisions of reporting requirements, but provide clarity on who is responsible for each requirement.

#### *Action 3: Remove the Buying Station Report Requirement*

Under Action 3 of this proposed rule, NMFS would remove the requirement in § 679.5(d) for a buying station to submit a Buying Station Report. The most recent year of landing report data in 2015, show that all 54 active buying stations are associated with shoreside processors that use eLandings. NMFS receives the landing data it needs through eLandings, and so does not need to require that the data be submitted in a Buying Station Report. The Buying Station Report would be removed from the regulations. Removing the requirement to submit a Buying Station Report removes a duplicative reporting requirement and reduces the burden on the regulated public. Buying stations will continue to be required to submit landing reports using eLandings.

To implement proposed Action 3, NMFS would modify references in the regulations to clarify whether certain recordkeeping and reporting requirements apply to tender vessels, buying stations, or both. Additionally, NMFS will remove the qualifier 'land-based' from references to buying stations where found in the regulations because buying station is defined in the regulations as a land-based entity. Finally, NMFS will revise the definition of "manager" to effectively include "stationary floating processor" managers.

#### *Action 4: Revise Mothership Definition*

Under Action 4 of this proposed rule, the definition of mothership in § 679.2 would be revised to simplify the structure of the definition by moving the text of paragraph (1) into the main body of the definition and deleting reserved paragraph (2). This minor technical correction does not substantively change the definition of a mothership.

### **Classification**

Pursuant to section 304(b)(1)(A) and section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI FMP, the GOA FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. Copies of the IRFA are available from NMFS (see **ADDRESSES**).

The IRFA describes this proposed rule, why this rule is being proposed, the objectives and legal basis for this proposed rule, the type and number of small entities to which this proposed rule would apply, and the projected reporting, recordkeeping, and other compliance requirements of this proposed rule. It also identifies any overlapping, duplicative, or conflicting Federal rules and describes any significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize any significant adverse economic impact of this proposed rule on small entities. The description of this proposed rule, its purpose, and its legal basis are described in the preamble and are not repeated here.

#### *Number and Description of Small Entities Regulated by This Proposed Rule*

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The Small Business Act (SBA) has established size criteria for all other major industry sectors in the United States, including fish processing businesses. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750

or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Action 1 of the proposed rule would affect tender vessels and processors that receive deliveries of groundfish from tender vessels. For the purposes of the IRFA, a tender vessel is categorized as a wholesale business servicing the fishing industry. Most tender vessels are independently owned and operated entities that are contracted with processors. The exceptions are tender vessels owned by processors. NMFS does not have data on the number of employees on tender vessels, and therefore will conservatively assume all tender vessels that are independently owned and operated are small entities.

Of the 30 tender vessels affected by this action, five are owned by processors so do not qualify as a small entity. Therefore, there are 25 tender vessels that are small entities under the SBA definition. In 2015, there were 8 processors that received groundfish deliveries from tender vessels. None of these processors affected by this action qualify as small entities for the purposes of the SBA.

Action 2 of the proposed rule would not add new requirements for tender vessels or buying stations; it would only clarify which requirements the entities are subject to. Therefore this action would be expected to have a small positive impact. This action would affect the 30 tender vessels and 54 buying stations that were active in 2015.

Action 3 of the proposed rule would remove a requirement on participants that is not currently used; therefore, it would be expected to have no effect on participants.

Action 4 of the proposed rule would revise the definition of mothership to make it more straightforward and would not modify the definition in a substantive way; therefore, it would be expected to have no effect on participants.

#### *Recordkeeping and Reporting Requirements*

This proposed rule would require modifications to the current recordkeeping and reporting requirements in the Alaska Interagency Electronic Reporting System collection (OMB Control Number 0648-0515). The modifications would include requiring tender vessel operators to complete the data fields on the tLandings tender

workstation application for each delivery the tender vessel accepts from a vessel. Additionally, the tender vessel operator would be required to provide the completed tLandings application to the processor on delivery. The processor would then be required to upload the information provided by the tender vessel operator in the tLandings application into the eLandings landing report.

This proposed rule would remove the Buying Station Report requirement. NMFS receives the landing data it needs through eLandings, and does not need the data submitted in the Buying Station Report. The Buying Station Report would be discontinued from any future use. Removing the requirement to submit a Buying Station Report removes a duplicative reporting requirement and reduces the burden on the regulated public. Buying stations will continue to be required to submit landing reports using eLandings.

#### *Federal Rules That May Duplicate, Overlap, or Conflict With This Proposed Rule*

The Analysis did not reveal any Federal rules that duplicate, overlap, or conflict with this proposed rule.

#### *Description of Significant Alternatives to This Proposed Rule That Minimize Economic Impacts on Small Entities*

An IRFA also requires a description of any significant alternatives to this proposed rule that would accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. Under each action, NMFS considered two alternatives—the no action alternative and the action alternative. NMFS did not identify any other alternatives that would meet the objectives of these actions at a lower cost and reduced economic impact on small entities. The no action alternative for Action 1 would maintain the existing process of tender vessel operators completing paper fish tickets for each delivery and giving the information to the processor to transcribe and upload into eLandings. Maintaining the manual writing and submission of tender delivery data would not meet the objective of providing timely and accurate landing data. To help reduce the burden of this proposed regulation on small entities for electronic recordkeeping and reporting, NMFS would minimize the cost by developing the tLandings tender workstation application and providing that at no cost to participants to provide services and products useful to the

industry, and by providing user support and training. The action alternatives for Actions 2, 3, and 4 have been determined to have either a small positive effect or no effect on participants, and therefore are not discussed further.

#### *Collection-of-Information Requirements*

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval under Control Number 0648–0515. Public reporting burden is estimated to average per response: 15 minutes for IERS application processor registration; 35 minutes for eLandings landing report; 35 minutes for manual landing report; 15 minutes for catcher/processor or mothership eLandings production report; and 35 minutes for tLandings landing report.

Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden statement; ways to enhance quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information, to NMFS (see **ADDRESSES**), and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

#### **List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

#### **Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.2, revise the definitions for “Buying station”, “Manager”, “Mothership”, “Tender vessel”, and “User” to read as follows:

#### **§ 679.2 Definitions.**

\* \* \* \* \*

*Buying station* means a land-based entity that receives unprocessed groundfish from a vessel for delivery to a shoreside processor and that does not process those fish.

\* \* \* \* \*

*Manager*, with respect to any shoreside processor, stationary floating processor, or buying station, means the individual responsible for the operation of the processor or buying station.

\* \* \* \* \*

*Mothership* means a vessel that receives and processes groundfish from other vessels.

\* \* \* \* \*

*Tender vessel* means a vessel that is used to transport unprocessed fish or shellfish received from another vessel to an associated processor.

\* \* \* \* \*

*User* means, for purposes of IERS and its components including eLandings and tLandings, an individual representative of a Registered Buyer; a Registered Crab Receiver; a mothership or catcher/processor that is required to have a Federal Fisheries Permit (FFP) under § 679.4; a shoreside processor or SFP and mothership that receives groundfish from vessels issued an FFP under § 679.4; any shoreside processor or SFP that is required to have a Federal processor permit under § 679.4; and his or her designee(s).

\* \* \* \* \*

■ 3. In § 679.5,

■ a. Revise paragraph (c)(6)(i),

■ b. Remove paragraphs (c)(6)(viii)(E)

■ c. Revise paragraphs (e)(3)(i), and (e)(5)(i)(A)(7);

■ d. Add paragraph (e)(14)

■ e. Remove and reserve paragraph (d).

The addition and revisions to read as follows:

#### **§ 679.5 Recordkeeping and reporting (R&R).**

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \*

(i) *Responsibility*. Except as described in paragraph (f)(1)(v) of this section, the

operator of a mothership that is required to have an FFP under § 679.4(b), or the operator of a CQE floating processor that receives or processes any groundfish from the GOA or BSAI from vessels issued an FFP under § 679.4(b), is required to use a combination of mothership DCPL and eLandings to record and report daily processor identification information, delivery information, groundfish production data, and groundfish and prohibited species discard or disposition data. The operator must enter into the DCPL any information for groundfish received from catcher vessels, groundfish received from processors for reprocessing or rehandling, and groundfish received from a tender vessel.

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(i) *Operation type*. Select the operation type from the dropdown list.

\* \* \* \* \*

(5) \* \* \*

(i) \* \* \*

(A) \* \* \*

(7) If the delivery is received from a buying station, indicate the name of the buying station. If the delivery is

received from a tender vessel, enter the ADF&G vessel registration number.

\* \* \* \* \*

(14) *Tender vessel landing report ("tLandings")*. (i) tLandings is an applications software for preparing electronic landing reports for commercial fishery landings to tender vessels.

(ii) The operator of a tender vessel taking delivery of fish or shellfish that is required to be reported to NMFS on a landing report under § 679.5(e)(5) must use tLandings to enter information about each landing of fish or shellfish and must provide that information to the User defined under § 679.2.

(iii) The User must configure and provide the tender vessel operator with the most recent version of the tLandings tender workstation application prior to the tender vessel taking delivery of fish or shellfish.

(iv) The tender vessel operator must log into the configured tLandings tender workstation application and provide the information required on the computer screen. Additional instructions for tLandings is on the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

(v) *Submittal time limit*. (A) The tender vessel operator must provide the landing information in tLandings to the User at the commencement of the

transfer or offload of fish or shellfish from the tender vessel to the processor.

(B) The User must upload the data recorded in tLandings by the tender vessel to prepare the initial landing report for a catcher vessel delivering to a tender vessel that is required under § 679.5(e) within the submittal time limit specified under § 679.5(e).

(vi) *Compliance*. By using tLandings, the User and the tender vessel operator providing information to the User accept the responsibility of and acknowledge compliance with § 679.7(a)(10).

\* \* \* \* \*

■ 4. In § 679.7, revise paragraph (a)(11) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(11) *Buying station or tender vessel—*  
(i) *Tender vessel*. Use a catcher vessel or catcher/processor as a tender vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

(ii) *Associated processor*. Function as a tender vessel or buying station without an associated processor.

\* \* \* \* \*

■ 5. Revise table 13 to part 679 to read as follows:

TABLE 13 TO PART 679—TRANSFER FORM SUMMARY

If participant type is * * *	And has * * * Fish product onboard	And is involved in this activity	VAR <sup>1</sup>	PTR <sup>2</sup>	Trans-ship <sup>3</sup>	Departure report <sup>4</sup>	Dockside sales receipt <sup>5</sup>	Landing receipt <sup>6</sup>
Catcher vessel greater than 60 ft LOA, mothership, or catcher/processor.	Only non-IFQ groundfish.	Vessel leaving or entering Alaska.	X					
Catcher vessel greater than 60 ft LOA, mothership, or catcher/processor.	Only IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab.	Vessel leaving Alaska ..	.....	.....	.....	X		
Catcher vessel greater than 60 ft LOA, mothership, or catcher/processor.	Combination of IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab and non-IFQ groundfish.	Vessel leaving Alaska ..	X	.....	.....	X		
Mothership, catcher/processor, shoreside processor, or SFP.	Non-IFQ groundfish .....	Shipment of groundfish product.	.....	X				
Mothership, catcher/processor, shoreside processor, or SFP.	Donated PSC .....	Shipment of donated PSC.	.....	X				
Buying station or tender vessel.	Groundfish .....	Receive or deliver groundfish in association with a shore-side processor, SFP, or mothership.						
Registered Buyer .....	IFQ sablefish, IFQ halibut, or CDQ halibut.	Transfer of product .....	.....	X				
A person holding a valid IFQ permit, IFQ hired master permit, or Registered Buyer permit.	IFQ sablefish, IFQ halibut, or CDQ halibut.	Transfer of product .....	.....	.....	.....		XXX	
Registered Buyer .....	IFQ sablefish, IFQ halibut, or CDQ halibut.	Transfer from landing site to Registered Buyer's processing facility.	.....	.....	.....			XX

TABLE 13 TO PART 679—TRANSFER FORM SUMMARY—Continued

If participant type is	And has * * * Fish product onboard	And is involved in this activity	VAR <sup>1</sup>	PTR <sup>2</sup>	Trans-ship <sup>3</sup>	Departure report <sup>4</sup>	Dockside sales receipt <sup>5</sup>	Landing receipt <sup>6</sup>
Vessel operator .....	Processed IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab.	Transshipment between vessels.	.....	.....	XXXX	.....	.....	.....
Registered Crab Receiver.	CR crab .....	Transfer of product .....	.....	X	.....	.....	.....	.....
Registered Crab Receiver.	CR crab .....	Transfer from landing site to RCR's processing facility.	.....	.....	.....	.....	.....	XX

<sup>1</sup> A vessel activity report (VAR) is described at § 679.5(k).<sup>2</sup> A product transfer report (PTR) is described at § 679.5(g).<sup>3</sup> An IFQ transshipment authorization is described at § 679.5(l)(3).<sup>4</sup> An IFQ departure report is described at § 679.5(l)(4).<sup>5</sup> An IFQ dockside sales receipt is described at § 679.5(g)(2)(iv).<sup>6</sup> A landing receipt is described at § 679.5(e)(8)(vii).

X indicates under what circumstances each report is submitted.

XX indicates that the document must accompany the transfer of IFQ species from landing site to processor.

XXX indicates receipt must be issued to each receiver in a dockside sale.

XXXX indicates authorization must be obtained 24 hours in advance.

\* \* \* \* \*

**§§ 679.2, 679.5, 679.7, 679.51 [Amended]**

■ 6. At each of the locations shown in the “Location” column, remove the phrase indicated in the “Remove”

column and replace it with the phrase indicated in the “Add” column for the number of times indicated in the “Frequency” column.

Location	Remove	Add	Frequency
§ 679.2 “Agent” (1) .....	buying station .....	buying station, tender vessel .....	1
§ 679.2 “Agent” (2) .....	buying station .....	buying station or tender vessel .....	1
§ 679.2 “Associated processor” .....	buying station .....	buying station or tender vessel .....	3
§ 679.2 “Shoreside processor” .....	buying stations .....	buying stations, tender vessels .....	1
§ 679.5(a)(2)(i) .....	or buying station .....	buying station, or tender vessel .....	2
§ 679.5(a)(2)(ii) .....	or buying station .....	buying station, or tender vessel .....	1
§ 679.5(a)(3)(ii) .....	catcher vessels and buying stations .....	catcher vessels, buying stations, and tender vessels.	1
§ 679.5(a)(3)(iii) .....	catcher vessel or buying station .....	catcher vessel, buying station, or tender vessel.	1
§ 679.5(b) .....	or buying station .....	buying station, or tender vessel .....	2
§ 679.5(c)(1)(vi)(B)(4) .....	or buying station .....	buying station, or tender vessel .....	1
§ 679.5(c)(3)(ii)(A)(3) .....	or buying station .....	buying station, or tender vessel .....	1
§ 679.5(c)(3)(viii) .....	buying station .....	buying station, tender vessel .....	1
§ 679.5(c)(3)(x) .....	buying station .....	buying station, tender vessel .....	1
§ 679.5(c)(4)(ii)(A)(3) .....	or buying station .....	buying station, or tender vessel .....	1
§ 679.5(c)(4)(viii) .....	buying station .....	buying station, tender vessel .....	1
§ 679.5(c)(4)(x) .....	buying station .....	buying station, tender vessel .....	1
§ 679.5(c)(6)(ii)(A) .....	buying station .....	tender vessel .....	1
§ 679.5(c)(6)(vi) introductory text .....	buying station .....	tender vessel .....	1
§ 679.5(c)(6)(vi)(A) .....	buying station .....	tender vessel .....	1
§ 679.5(c)(6)(vi)(B) .....	buying station .....	tender vessel .....	1
§ 679.5(c)(6)(vi)(C) .....	buying station .....	tender vessel .....	1
§ 679.5(c)(6)(vi)(F) .....	buying station .....	tender vessel .....	1
§ 679.5(c)(6)(vi)(H) .....	buying station .....	tender vessel .....	2
§ 679.5(c)(6)(vii) .....	buying station .....	tender vessel .....	1
§ 679.5(c)(6)(viii)(A) .....	buying station .....	tender vessel .....	1
§ 679.5(e)(3)(viii) .....	buying station .....	buying station, tender vessel, .....	1
§ 679.5(e)(5)(i) introductory text .....	buying station .....	buying station or tender vessel .....	1
§ 679.5(e)(5)(i)(A)(6) .....	buying station .....	buying station or tender vessel .....	1
§ 679.5(e)(5)(i)(C)(1) .....	buying station .....	buying station or tender vessel .....	1
§ 679.5(e)(5)(iii) .....	buying station .....	buying station or tender vessel .....	1
§ 679.5(e)(6)(i) introductory text .....	buying station .....	tender vessel .....	1
§ 679.5(e)(6)(i)(B)(1) .....	buying station .....	tender vessel .....	1
§ 679.5(e)(6)(iii) .....	buying station .....	tender vessel .....	1
§ 679.5(f)(1)(v) .....	buying station .....	tender vessel .....	1
§ 679.5(f)(5)(ii) .....	buying station .....	buyer station or tender vessel .....	1
§ 679.5(p)(1) .....	buying station .....	tender vessel .....	1
§ 679.7(d)(4)(i)(C) .....	buying station .....	buying station or tender vessel .....	1
§ 679.51(e)(3) .....	or buying station .....	buying station, or tender vessel .....	1
Table 1b to Part 679 .....	and buying stations .....	buying stations, and tender vessels .....	1

[FR Doc. 2016-18110 Filed 7-29-16; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 151113999-6620-01]

RIN 0648-BF54

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; American Fisheries Act; Amendment 113**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 113 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). This proposed rule would modify the Bering Sea and Aleutian Islands (BSAI) Pacific cod fishery to set aside a portion of the Aleutian Islands Pacific cod total allowable catch for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch for processing to shoreside processors located on land west of 170 W. longitude in the Aleutian Islands (Aleutian Islands shoreplants). The harvest set-aside would apply only if specific notification and performance requirements are met, and only during the first few months of the fishing year. This harvest set-aside would provide the opportunity for vessels, Aleutian Islands shoreplants, and the communities where Aleutian Islands shoreplants are located to receive benefits from a portion of the Aleutian Islands Pacific cod fishery, while the notification and performance requirements would preserve an opportunity for the complete harvest of the BSAI Pacific cod resource should complications arise with participation in the harvest set-aside fishery. This

proposed rule is intended to promote the goals and objectives of Amendment 113, the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

**DATES:** Submit comments on or before August 31, 2016.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2015-0155, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2015-0155](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2015-0155), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information voluntarily submitted by the commenter will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous).

Electronic copies of Amendment 113 to the FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (collectively, Analysis) prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted by mail to NMFS at the above address; emailed to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov); or faxed to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Julie Scheurer, 907-586-7228.

**SUPPLEMENTARY INFORMATION:****Authority for Action**

NMFS manages the groundfish and Pacific cod fisheries in the Exclusive Economic Zone of the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce approved, the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at 50 CFR part 600.

The Council submitted Amendment 113 for review by the Secretary of Commerce. A notice of availability of Amendment 113 was published in the **Federal Register** on July 19, 2016, with comments invited through September 19, 2016. All relevant written comments received by that time, whether specifically directed to Amendment 113 or to this proposed rule, will be considered in the decision to approve or disapprove Amendment 113.

**Background**

This proposed rule would modify the BSAI Pacific cod fishery to set aside a portion of the Aleutian Islands Pacific cod total allowable catch (TAC) for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch to Aleutian Islands shoreplants for processing. The harvest set-aside would apply only if specific notification and performance requirements are met, and only during the first few months of the fishing year. The following sections of this preamble provide a description of (1) the BSAI Pacific cod fishery; (2) the need for the proposed rule; and (3) the proposed rule.

To aid the reader, the following glossary table (Table 1) lists the abbreviations, acronyms, and other technical terms most commonly used throughout this document. These terms are defined and discussed further in the following sections of this preamble.

TABLE 1—GLOSSARY OF TERMS, ABBREVIATIONS, AND ACRONYMS FREQUENTLY USED IN THIS PROPOSED RULE

ABC .....	acceptable biological catch.
AFA .....	American Fisheries Act.
AI .....	Aleutian Islands subarea (see definition in § 679.2).
BS .....	Bering Sea subarea (see definition in § 679.2).
BSAI .....	Bering Sea and Aleutian Islands Management Area (see definition in § 679.2).
CDQ .....	Western Alaska Community Development Quota.
Council .....	North Pacific Fishery Management Council.

TABLE 1—GLOSSARY OF TERMS, ABBREVIATIONS, AND ACRONYMS FREQUENTLY USED IN THIS PROPOSED RULE—  
Continued

CP .....	catcher processor vessel.
CV .....	catcher vessel.
DFA .....	directed fishing allowance.
FMP .....	Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.
GHL .....	guideline harvest level.
ICA .....	incidental catch allowance.
LOA .....	length overall.
mt .....	metric ton.
NMFS .....	National Marine Fisheries Service.
OFL .....	overfishing level.
State .....	State of Alaska.
TAC .....	total allowable catch.

### The BSAI Pacific Cod Fishery

#### *Management of the BSAI Pacific Cod Fishery*

Pacific cod (*Gadus macrocephalus*) is one of the most abundant and valuable groundfish species harvested in the BSAI. Vessels harvest Pacific cod using trawl and non-trawl gear. Non-trawl gear includes hook-and-line, jig, and pot gear. Vessels harvesting BSAI Pacific cod operate as catcher vessels (CVs) that harvest and deliver the fish for processing, or as catcher processors (CPs) that harvest and process the catch on board.

The FMP and its implementing regulations at § 679.20(c) require that, after consultation with the Council, NMFS specify an overfishing level (OFL), an acceptable biological catch (ABC), and a TAC for each target species or species group of groundfish, including Pacific cod, on an annual basis. The OFL is the level above which overfishing is occurring for a species or species group. The ABC is the level of a species' or species group's annual catch that accounts for the scientific uncertainty in the estimate of OFL, and any other scientific uncertainty. Under the FMP, the ABC is set below the OFL. The TAC is the annual catch target for a species or species group, derived from the ABC by considering social and economic factors and management uncertainty, and in the case of BSAI Pacific cod, after considering any harvest allocations for guideline harvest level (GHL) fisheries managed by the State of Alaska (State) and occurring within State waters. Under the FMP, the TAC must be set lower than or equal to the ABC.

The OFLs, ABCs, and TACs for BSAI groundfish are specified through the annual harvest specification process. A detailed description of the annual harvest specification process is provided in the final 2016 and 2017 harvest specifications for groundfish of the BSAI (81 FR 14773, March 18, 2016). The annual harvest specification

process for BSAI Pacific cod is briefly summarized here. Specific examples of Pacific cod OFLs, ABCs, TACs, and other apportionments of Pacific cod used in this preamble are based on the 2017 specifications from the final 2016 and 2017 harvest specifications for groundfish of the BSAI unless otherwise noted.

For Pacific cod, the harvest specifications establish an OFL, ABC, and TAC for the Bering Sea subarea (Bering Sea) of the BSAI, and a separate OFL, ABC, and TAC for the Aleutian Islands subarea (Aleutian Islands) of the BSAI. Before the Pacific cod TACs are established, the Council and NMFS consider social and economic factors, and management uncertainty, as well as two factors that are particularly relevant to BSAI Pacific cod: Pacific cod GHL fisheries that occur in the State waters of the BSAI, and an overall limit on the maximum amount of TAC that can be specified for BSAI groundfish.

Currently, the State manages two GHL fisheries for Pacific cod, one that occurs within State waters in the Bering Sea and one that occurs within State waters in the Aleutian Islands. Under current State regulations, each year the Bering Sea GHL fishery is limited to no more than 6 percent of the ABC specified for Pacific cod in the Bering Sea. The Aleutian Islands GHL fishery is limited to no more than 27 percent of the ABC specified for Pacific cod in the Aleutian Islands beginning in 2016, with annual "step-up" provisions that increase the amount of the GHL fishery if it was fully harvested in the previous year. The Aleutian Islands GHL fishery can increase to a maximum of 39 percent of the Aleutian Islands ABC or to a maximum of 15 million pounds (6,804 mt), whichever is less. Section 2.6.3 of the Analysis provides additional description of the GHL fisheries in the BSAI. Pacific cod TACs are specified at reduced levels that take into account the GHL fisheries so that the combined harvest limits from GHL fisheries and

the TACs do not exceed the ABCs specified for the Bering Sea or Aleutian Islands.

The Council and NMFS also consider requirements under the FMP and regulations that limit the optimum yield for BSAI groundfish. The FMP and regulations establish 2.0 million metric tons (mt) as the maximum optimum yield of all BSAI groundfish species combined (Section 3.2.2.2 of the FMP and § 679.20(a)(1)). Under this requirement, the sum of the TACs for all groundfish species in the BSAI must be specified within the optimum yield range of 1.4 million to 2.0 million mt (see § 679.20(a)(1)(i)). Typically, NMFS specifies TACs for all BSAI groundfish that total to 2 million mt, even though summed ABCs for all BSAI groundfish species can exceed the upper limit of the optimum yield range. For example, in 2016, the total ABCs for all BSAI groundfish of 3.24 million mt substantially exceeded the 2 million mt limit for BSAI groundfish (81 FR 14773, March 18, 2016). However, the Council recommended and NMFS implemented TACs that equaled 2 million mt for all BSAI groundfish to ensure the 2 million mt optimum yield limit was not exceeded (81 FR 14773, March 18, 2016).

In 2016, the Pacific cod TACs for the Bering Sea and Aleutian Islands were reduced from their maximum permissible limits (*i.e.*, when the TAC is set equal to ABC) to accommodate the GHL fisheries and the 2 million mt limit on BSAI groundfish TACs. The combined ABCs for Pacific cod totaled 272,600 mt, and the combined TACs totaled 251,519 mt (81 FR 14773, March 18, 2016).

Once the TACs are established, regulations at § 679.20(a)(7)(i) allocate 10.7 percent of the Bering Sea Pacific cod TAC and 10.7 percent of the Aleutian Islands Pacific cod TAC to the Community Development Quota (CDQ) Program for the exclusive harvest by Western Alaska CDQ groups. Section



305(i) of the Magnuson-Stevens Act authorizes 65 communities organized into six nonprofit corporations called CDQ groups to receive exclusive harvest privileges of groundfish, including Pacific cod. Section 305(i) of the Magnuson-Stevens Act specifies the methods for allocating these harvest privileges. Once allocated, CDQ groups must ensure that they do not exceed their allocations. Section 2.6.1 of the Analysis provides additional detail on

the CDQ Program and allocations to the CDQ groups.

After subtraction of the CDQ allocation from each TAC, NMFS combines the remaining Bering Sea and Aleutian Islands TACs into one BSAI non-CDQ TAC, which is available for harvest by nine non-CDQ fishery sectors. Regulations at § 679.20(a)(7)(ii)(A) define the nine Pacific cod non-CDQ fishery sectors in the BSAI and specify the percentage allocated to each. The non-CDQ fishery sectors are defined by a combination of

gear type (*e.g.*, trawl, hook-and-line), operation type (*i.e.*, CV or CP), and vessel size categories (*e.g.*, vessels greater than or equal to 60 ft in length overall). Through the annual harvest specifications process, NMFS allocates an amount of the combined BSAI non-CDQ TAC to each of these nine non-CDQ fishery sectors. The nine non-CDQ fishery sectors and the percentage of the combined BSAI non-CDQ TAC allocated to each sector are shown in Table 2 of this preamble.

TABLE 2—ALLOCATIONS OF THE COMBINED BSAI NON-CDQ TAC TO THE NON-CDQ FISHERY SECTORS

Non-CDQ fishery sector	Percentage allocation of the combined BSAI non-CDQ TAC
Hook-and line catcher vessels greater than or equal to 60 ft (18.3 m) length overall (LOA) .....	0.2
Jig gear .....	1.4
Pot catcher processors .....	1.5
Hook-and-line and pot catcher vessels less than 60 ft LOA .....	2.0
American Fisheries Act (AFA) trawl catcher processors .....	2.3
Pot catcher vessels greater than or equal to 60 ft LOA .....	8.4
Non-AFA trawl catcher processors (Amendment 80 CPs) .....	13.4
Trawl catcher vessels .....	22.1
Hook-and-line catcher processors .....	48.7

NMFS manages each of the non-CDQ fishery sectors to ensure harvest of Pacific cod does not exceed the overall annual allocation made to each of the non-CDQ fishery sectors. NMFS monitors harvests that occur while vessels are directed fishing for Pacific cod (specifically targeting and retaining Pacific cod above specific threshold levels) and harvests that occur while vessels are directed fishing in other fisheries and incidentally catching Pacific cod (*e.g.*, the incidental catch of Pacific cod in the directed pollock fishery). Section 679.2 provides the regulatory definition of “directed fishing.” For the non-AFA trawl CP sector, also known as the Amendment 80 sector, NMFS allocates exclusive harvest privileges to non-CDQ fishery participants that cannot be exceeded. For other non-CDQ fishery sectors, NMFS carefully tracks both directed and incidental catch of Pacific cod. NMFS takes appropriate management measures, such as closing directed fishing for a non-CDQ fishery sector, to ensure that total directed fishing and incidental fishing harvests do not exceed that sector’s allocation. Section 2.6.6 of the Analysis describes NMFS’ management of the non-CDQ fishery sectors.

An allocation to a non-CDQ fishery sector may be harvested in either the Bering Sea or the Aleutian Islands, subject to the non-CDQ Pacific cod TAC specified for the Bering Sea or the Aleutian Islands. If the non-CDQ Pacific cod TAC is or will be reached in either the Bering Sea or Aleutian Islands, NMFS will prohibit directed fishing for Pacific cod in that subarea for all non-CDQ fishery sectors (see § 679.20(d)(1)(iii)).

Allocations of Pacific cod to the CDQ Program and to the non-CDQ fishery sectors are further apportioned by seasons. Season dates for the CDQ and non-CDQ fishery sectors are established at § 679.23(e)(5). In general, regulations apportion CDQ and non-CDQ fishery sector allocations among three seasons that correspond to the early (A-season), middle (B-season), and late (C-season) portions of the year. The specific seasonal dates established for the CDQ Program and each of the non-CDQ fishery sectors are provided in the final 2016 and 2017 harvest specifications for groundfish of the BSAI (81 FR 14773, March 18, 2016). Depending on the specific CDQ Program or non-CDQ fishery sector allocation, between 40 percent and 70 percent of the Pacific cod allocation is apportioned to the A-

season, historically the most lucrative fishing season due to the presence of valuable roe in the fish and the good quality of the flesh during that time of year.

The allocation of Pacific cod among the CDQ Program and the nine non-CDQ fishery sectors, as well as the seasonal apportionment of those allocations, create a large number of separate sectoral-seasonal allocations. To help ensure the efficient management of these allocations, regulations allow NMFS to reallocate (rollover) any unused portion of a seasonal apportionment from any non-CDQ fishery sector (except the jig sector) to that sector’s next season during the current fishing year, unless the Regional Administrator determines a non-CDQ fishery sector will not be able to harvest its allocation (see § 679.20(a)(7)(iv)(B)).

The 2017 ABCs, OFLs, TACs, CDQ and non-CDQ fishery sector allocations, and seasonal apportionments of BSAI Pacific cod are shown in Table 3 of this preamble. Table 3 of this preamble includes data from Tables 2 and 9 in the 2016 and 2017 final harvest specifications for the BSAI groundfish fisheries (81 FR 14773, March 18, 2016).

TABLE 3—PACIFIC COD OFL, ABC, AND TAC SPECIFICATIONS IN THE BSAI FOR 2017

Description of OFL, ABC, and TAC specification process		2017 Management area and allocation amount (in metric tons)		
		Bering Sea	Aleutian Islands	BSAI
Specification of separate BS and AI OFLs, ABCs.	OFL .....	412,000	23,400	N/A.
	ABC .....	255,000	17,600	N/A.
Specification of TAC (considers GHL fisheries and 2.0 million mt limit).	TAC .....	238,680	12,839	N/A.
CDQ Allocation of 10.7% of the TAC .....	CDQ .....	25,539	1,374	N/A.
Seasonal Apportionment of CDQ Allocation.	CDQ Seasonal Apportionment .....	Season allocations are established depending on specific gear type used (See § 679.20(a)(7)(i)(B)).		N/A.
Non-CDQ TAC (89.3% of the TAC) for each.	Non-CDQ TAC .....	213,141	11,465	224,606.
Allocation of the combined BSAI non-CDQ TAC to each of the non-CDQ fishery sectors, and the seasonal apportionment of that allocation.	Hook-and line catcher vessels greater than or equal to 60 ft LOA.	N/A	N/A	A season: 228. B season: 219.
	Jig gear .....	N/A	N/A	A season: 1,887. B season: 629. C season: 629.
	Pot catcher processors .....	N/A	N/A	A season: 1,712. B season: 1,645. All Year: 4,476.
	Hook-and-line and pot catcher vessels less than 60 ft LOA.	N/A	N/A	
	AFA trawl catcher processors .....	N/A	N/A	A season: 3,874. B season: 1,291. C season: 0.
	Pot catcher vessels greater than or equal to 60 ft LOA.	N/A	N/A	A season: 9,587. B season: 9,211.
	Non-AFA trawl catcher processors (Amendment 80 CPs).	N/A	N/A	A season: 22,573. B season: 7,524. C season: 0.
	Trawl catcher vessels .....	N/A	N/A	A season: 36,732. B season: 5,460. C season: 7,446.
	Hook-and-line catcher processors .....	N/A	N/A	A season: 55,581. B season: 53,402. C season: 228.

#### *Harvesting and Processing of Pacific Cod in the Aleutian Islands*

A variety of vessels using a variety of gear types harvest the Aleutian Islands Pacific cod TAC. Trawl CV and trawl CP vessels have been among the most active participants in the Aleutian Islands Pacific cod fishery. The trawl CV fishery sector harvested 55 percent of the Pacific cod from the Aleutian Islands on an average annual basis during 2003 through 2015 (Table 2–17 of the Analysis), while trawl CP sectors, which include the AFA and the Amendment 80 fishery sectors, harvested 29 percent of the Pacific cod from the Aleutian Islands on an average annual basis during 2003 through 2015 (Table 2–10 of the Analysis). The hook-and-line CP sector is the only other sector that has consistently participated in the Aleutian Islands Pacific cod fishery annually. The hook-and-line CP sector harvested 14 percent of the Pacific cod from the

Aleutian Islands on an average annual basis during 2003 through 2015 (Table 2–13 of the Analysis). Non-trawl CVs have harvested only a very small portion of the Pacific cod from the Aleutian Islands: approximately 2 percent of the Pacific cod harvest on an average annual basis during 2003 through 2015 (Table 2–20 of the Analysis). Section 2.6.6 of the Analysis provides additional detail on harvesting in the Aleutian Islands.

Trawl CVs deliver their catch of Aleutian Islands Pacific cod to several types of processors in the Aleutian Islands. Some trawl CVs deliver their catch to CPs for processing on board the CP. In this situation, the CP is acting as a mothership. These CPs also harvest and process their own catch of Aleutian Islands Pacific cod. Some trawl CVs deliver their catch to stationary floating processors anchored in specific locations that receive and process catch

on board but do not harvest and process their own catch. Some trawl CVs deliver their catch to shoreside processing facilities that are physically located on land within the Aleutian Islands; these facilities are defined as “Aleutian Islands shoreplants” in this proposed rule.

Currently, Aleutian Islands shoreplants are located in the communities of Adak and Atka, and these shoreplants can receive deliveries of Pacific cod from CVs. Although the Atka shoreplant has not received and processed Aleutian Islands Pacific cod, the shoreplant in Adak has received and processed relatively large amounts of Pacific cod. The vast majority of Aleutian Islands Pacific cod delivered to the Adak shoreplant comes from catch harvested by trawl CVs (Table 2–32 of the Analysis). The percentage of total Aleutian Islands Pacific cod processed by Aleutian Islands shoreplants has

been highly variable, ranging from 0 to 49 percent since 2003 (Table 2–31 of the Analysis). From 2003 through June 2015, the Adak shoreplant has received an annual average of approximately 25 percent of the Aleutian Islands Pacific cod harvest (Table 2–31 of the Analysis). Relatively small amounts of Pacific cod harvested in the Aleutian Islands have also been delivered to shoreplants located outside the Aleutian Islands, on average less than 1 percent of the total amount of Aleutian Islands Pacific cod harvested from 2003 through June 2015. Section 2.7.1 of the Analysis has additional detail on the delivery and processing of Aleutian Islands Pacific cod.

#### *Harvesting and Processing in Adak*

The development of a local CV fleet has long been a goal of the local leadership in Adak, but currently the number of locally owned or locally operated CVs is limited. A variety of programs have been implemented to encourage economic opportunities for local CVs and processing operations. Some of these programs include the allocation of the Aleutian Islands pollock TAC to the Aleut Corporation, an Alaska Native tribal organization that represents specific community interests in Adak (70 FR 9856; March 1, 2005), allocations of Western Aleutian Islands golden king crab to the Adak Community Development Corporation under the BSAI Crab Rationalization Program (70 FR 10174; March 2, 2005), and the establishment of a Community Quota Entity Program in the Aleutian Islands that provides additional fishing opportunities for residents of fishery dependent communities in the Aleutian Islands and sustains participation in the halibut and sablefish IFQ fisheries (79 FR 8870; February, 14, 2014). Adak also acts as a port of embarkation and disembarkation for personnel on board CPs and CVs harvesting groundfish in the Aleutian Islands.

Despite only having a small local CV fleet, Adak has a substantial degree of engagement in the Aleutian Islands Pacific cod fishery. Adak is home to a large shoreplant. Pacific cod is the primary species delivered to and processed at the Adak shoreplant. The Adak shoreplant has the capability to process one million round pounds (454 mt) of Pacific cod daily. When operational, the Adak shoreplant primarily receives and processes Pacific cod harvested from January through March, the period corresponding to the A season. Processing revenue from the A-season Aleutian Islands Pacific cod fishery has been the main source of income for the Adak shoreplant (and the

primary source of raw fish tax revenue for the City of Adak). The processing of A-season Aleutian Islands Pacific cod has historically accounted for approximately 75 percent of the Adak shoreplant's revenue. The Adak shoreplant has not been operated continuously over the last decade. In some years, the facility has not received any deliveries of groundfish, crab, or halibut due to a variety of operational and logistical challenges, as well as changes in fishery management measures. Section 2.6.8 of the Analysis provides additional detail on Adak shoreplant processing operations.

#### *Harvesting and Processing in Atka*

Vessels operating out of Atka participate in halibut fisheries, and receive groundfish allocations through the Aleutian Pribilof Island Community Development Association (APICDA) CDQ group. As a member of APICDA, Atka benefits from CDQ shares in a number of commercial fisheries, including Pacific cod. In 2016, APICDA received an allocation of 15 percent, or 193 mt, of the Aleutian Islands CDQ Pacific cod allocation, as well as allocations of halibut, crab, and other Aleutian Islands groundfish (See the 2016 CDQ Program allocation matrix available at <https://alaskafisheries.noaa.gov/sites/default/files/reports/annualmatrix2016.pdf>).

The Atka shoreplant primarily processes halibut and sablefish. The local commercial fleet primarily harvests halibut, with limited harvests of sablefish. However, the community and processor have made substantial infrastructure investments to make the shoreplant a year-round operation with the capacity to process Pacific cod. Once completed, the processing capacity of the Atka shoreplant is anticipated to be approximately 400,000 round pounds (181 mt) of Pacific cod per day. Section 2.6.8 of the Analysis provides additional detail on Atka shoreplant processing operations.

Since 2008, trawl CVs have primarily delivered their catch of Aleutian Islands Pacific cod to a small group of CPs that operate as motherships (processing Pacific cod delivered by trawl CVs). As deliveries of Aleutian Islands Pacific cod harvest from trawl CVs to CPs has increased in recent years, the amount of trawl CV harvest delivered to Aleutian Islands shoreplants has decreased. From 2003 through 2007, an average of 69 percent of the annual trawl CV harvest of Aleutian Islands Pacific cod was delivered to Aleutian Islands shoreplants (see Table 2–32 of the Analysis), with the remainder of the harvest delivered to CPs acting as

motherships or to stationary floating processors. From 2008 through June 2015, an average of 34 percent of the annual trawl CV harvest of Aleutian Islands Pacific cod was delivered to Aleutian Islands shoreplants, with the remainder of the harvest delivered to CPs acting as motherships or to stationary floating processors (see Table 2–32 of the Analysis). Even if 2011 and 2015 (the years when the Aleutian Islands shoreplants were not operational) are removed from consideration, an average of 45 percent of the annual trawl CV harvest of Aleutian Islands Pacific cod was delivered to Aleutian Islands shoreplants from 2008 through June 2015, a reduction of approximately 35 percent in the annual average between 2003 and 2007. Additionally, CPs have demonstrated the capacity to process the entire harvest of Pacific cod in the Aleutian Islands in years when no Aleutian Islands shoreplant is in operation. This proposed rule is intended in part to mitigate the risk that vessels, Aleutian Islands shoreplants, and the communities in which they are located will be preempted from participating in the Aleutian Islands Pacific cod fishery.

Section 2.6 of the Analysis provides additional description of the factors that have affected the harvesting and processing of Pacific cod in the Aleutian Islands.

#### **Need for This Proposed Rule**

In 2008, the Council began to examine the need for processing sideboards for processing vessels operating in the Aleutian Islands. As the Council considered this issue over the next several years, it recognized that several other management actions under consideration by the Council might greatly affect any action to modify the Aleutian Islands Pacific cod fishery.

Since 2008, Aleutian Islands fishing communities, and specifically the community of Adak and its shoreplant, have lost their historical place in the Pacific cod fishery. The amount of Pacific cod being delivered to Aleutian Islands shoreplants has been highly variable and vulnerable, which is not conducive to stable shoreside operations. Several factors have contributed to this instability, and therefore the need for this proposed action, including decreased Pacific cod biomass in the Aleutian Islands subarea; the establishment of separate OFLs, ABCs, and TACs for Pacific cod in the Bering Sea and the Aleutian Islands (referred to as the “BSAI TAC split”); changing Steller sea lion protection measures; and changing fishing

practices in part resulting from rationalization programs.

By October 2013, decisions on some of these other management actions were completed, and the Council again considered modifications to the Aleutian Islands Pacific cod fishery at its February 2014 meeting. After receiving recommendations from the Council's Advisory Panel and testimony from the public, the Council developed a suite of alternatives and options for consideration. The Council adopted its preferred alternative for Amendment 113 at its October 2015 meeting.

#### *BSAI Pacific Cod Biomass Estimates and TAC Split*

Pacific cod biomass in the Aleutian Islands declined steadily from about 2000 until 2014 (see Section 3.3 of the Analysis), although the stock assessment in 2015 indicated some stabilization. Prior to 2011, the Pacific cod stock assessment model for the BSAI had been based on an abundance estimate from the eastern Bering Sea that was expanded to the entire BSAI. In 2011, based on information that the proportion of the combined BSAI biomass in the Aleutian Islands subarea might be smaller than previously estimated, the Council requested a stock assessment specific to Pacific cod in the Aleutian Islands subarea. Prior to the Aleutian Islands-specific stock assessment, approximately 16 percent of the Pacific cod biomass was attributed to the Aleutian Islands; however, the stock assessment revealed that the actual distribution was in the 7 to 9 percent range. After considering the combined effects of a declining Aleutian Islands biomass of Pacific cod, revisions to the stock assessment, and the proportion of the stock attributed to the Aleutian Islands, the Council recommended splitting the BSAI Pacific cod TAC between the two subareas. See Section 3.3 of the Analysis for more information about the BSAI TAC split. The declining biomass, revised stock assessment, and BSAI TAC split resulted in a substantial decrease in the TAC available for harvest in the Aleutian Islands.

#### *Steller Sea Lion Protection Measures*

The western distinct population segment of Steller sea lions was listed as threatened under the Endangered Species Act in 1990 (55 FR 49204, November 26, 1990), and reclassified as endangered in 1997 (62 FR 30772, June 5, 1997). Since then, NMFS has restricted fishing with trawl gear near Steller sea lion rookeries and managed fisheries to limit and disperse harvest in important Steller sea lion foraging areas.

In 2011, NMFS increased the areas of closure for directed fishing for Pacific cod in the western Aleutian Islands to ensure the fisheries were not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or adversely modify their designated critical habitat. These protection measures reduced harvest opportunities for Pacific cod in the Aleutian Islands, shifting more fishing effort to the Bering Sea, which contributed to the decline in deliveries of Pacific cod to Aleutian Islands shoreplants.

In 2014, NMFS implemented new Steller sea lion protection measures in the Aleutian Islands (79 FR 70286, November 25, 2014) that are less restrictive than the measures previously in place; however, in that year NMFS also split the BSAI TAC into separate TACs for the Bering Sea and Aleutian Islands subareas. While the BSAI TAC split greatly reduced the potential impacts of the Pacific cod fisheries on Steller sea lion Pacific cod prey resources, it also resulted in a substantial reduction in the amount of Pacific cod available for harvest in the Aleutian Islands. Consequently, implementation of the less restrictive Steller sea lion protection measures in 2014 did not improve opportunities for deliveries of Pacific cod to shoreside processors that support communities in the Aleutian Islands, given the effects of the BSAI split.

Additional information about the effects of Steller sea lion protection measures on the Aleutian Islands Pacific cod fishery and Aleutian Islands communities is available in Section 3.3 of the EIS prepared for the Steller sea lion protection measures (Available at <https://alaskafisheries.noaa.gov/fisheries/sslpm-feis>) and in Section 2.6.5 of the Analysis prepared for this proposed rule.

#### *Rationalization Programs*

Some of the recent decline in processing of Aleutian Islands Pacific cod by Aleutian Islands shoreplants is likely due to the reduction in Aleutian Islands Pacific cod biomass, the BSAI TAC split, and Steller sea lion protection measures, but changes in fishing behavior by the offshore sector, starting with the implementation of two types of rationalization programs in 2008, has also contributed to the decline in Aleutian Islands Pacific cod delivered and processed at Aleutian Islands shoreplants. In 2008, both Amendment 80 and Amendment 85 were implemented. Amendment 80 provided an allocation of the TACs for six groundfish species, including Pacific

cod, to facilitate the development of cooperative arrangements among the eligible non-pelagic trawl CPs, thus allowing opportunities for consolidation within the Amendment 80 sector and allowing for increased processing participation by the sector in other fisheries such as Aleutian Islands Pacific cod. Amendment 85 reduced the allocation of BSAI Pacific cod to trawl sectors from 47 percent to 37.8 percent and further apportioned the BSAI Pacific cod allocation among the different trawl sectors.

As a result of the implementation of Amendment 80 and Amendment 85, the fishing behavior for the trawl sectors changed in the Aleutian Islands Pacific cod fishery. Section 2.7.1 of the Analysis shows that prior to 2008, a majority of the Aleutian Islands Pacific cod processed by the offshore sector came from CP harvest, but after 2008, CV deliveries of Aleutian Islands Pacific cod to CPs played a more significant role in the offshore processing. The percentage of the total CV deliveries of Aleutian Islands Pacific cod to shoreplants decreased from an annual average of 69 percent prior to 2008, to an annual average of 34 percent since 2008, with the remainder being delivered to the offshore sector (motherships and floating processors). Before Amendment 80 to the FMP was implemented in 2008, between 3 and 6 percent of the total BSAI Pacific cod landings were made at Adak. However, since 2012, the share of total BSAI Pacific cod landings made at Adak has been 1 to 2 percent. The flexibility of Amendment 80 likely afforded the offshore sector the ability to change its fishing behavior in the Aleutian Islands Pacific cod fishery to lessen the impacts of Amendment 85, a lower Aleutian Islands Pacific cod biomass, and the BSAI Pacific cod TAC split. When compared to the offshore sector, the Aleutian Islands shoreplants have little ability to change their behavior to reduce the impacts resulting from a lower Aleutian Islands Pacific cod biomass and the BSAI Pacific cod TAC split, since the Aleutian Islands shoreplants rely entirely on CV deliveries of Aleutian Islands Pacific cod. This disparity in flexibility between the offshore sector and Aleutian Islands shoreplants leaves the Aleutian Islands shoreplants at a significant disadvantage in adapting to changes in the Aleutian Islands Pacific cod fishery.

#### *Rationale for Action*

Generally, this proposed rule would establish a harvest set-aside in which a portion of the Aleutian Islands Pacific

cod TAC would be available for harvest only by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch to Aleutian Islands shoreplants for processing. The harvest set-aside would apply only if specific notification and performance requirements are met, and only during the first few months of the fishing year. A detailed description of this proposed rule is provided in the following section of the preamble.

The Council determined and NMFS agrees that a harvest set-aside is needed for several reasons. First, the Council acknowledged that the TAC for Aleutian Islands Pacific cod was significantly lower than predicted. Second, the rationalization programs, and particularly the Amendment 80 Program, have allowed an influx of processing capacity into the Aleutian Islands Pacific cod fishery capable of processing the Aleutian Islands Pacific cod TAC, exacerbating the need for Council action to support Aleutian Islands fishing communities. The Council determined that without Council action, there would be a continued risk that fishing communities, and particularly Aleutian Islands shoreplants and the communities in which they are located, would not be able to sustain participation in the Aleutian Islands Pacific cod fishery. This proposed rule would maintain opportunities for remote fishing communities to participate in the Pacific cod fishery. Third, the Council recognized that multiple sectors have historically participated in the Aleutian Islands Pacific cod fishery, but for the CP sectors, the Aleutian Islands Pacific cod fishery contributed only 1 to 3 percent of total first wholesale gross revenue in recent years, compared to the shoreplants (Adak), where almost all of their total first wholesale gross revenue was from Aleutian Islands Pacific cod during the same period.

This proposed rule would strike a balance between providing fishing community protections and ensuring that the fishery sectors have a meaningful opportunity to fully harvest their allocations by including several thresholds to prevent Aleutian Islands Pacific cod from being unharvested. This proposed rule would provide benefits and stability to fishery-dependent fishing communities in the Aleutian Islands and is responsive to changes in management regimes like rationalization programs that necessitate putting protections in place to protect other non-rationalized fisheries.

The Council also stressed that this proposed rule would not affect any

sector's BSAI Pacific cod allocation or the CDQ Pacific cod allocation in the Aleutian Islands. Non-CDQ sectors would continue to receive the allocations established under Amendment 85.

The Council recognized that neither of the existing Aleutian Islands shoreplants is currently processing Aleutian Islands Pacific cod. However, the Council also recognized that the protection measures and harvest set-aside in this proposed rule would minimize the risk of exclusion from, and maintain opportunities for participation in, the Aleutian Islands Pacific cod fishery by Aleutian Islands harvesters, processors, and communities.

This proposed rule would revise regulations to provide additional opportunities for harvesters to deliver Aleutian Islands Pacific cod to Aleutian Islands shoreplants. The Aleutian Islands Pacific cod TAC is not sufficient to allow all sectors to prosecute the Aleutian Islands Pacific cod fishery at their historical levels. Without protections, Aleutian Islands harvesters, shoreplants, and fishing communities could be preempted from the fishery by the offshore sector. This proposed action would create a set aside for vessels delivering to shoreplants, especially in low TAC years.

This proposed rule is intended to provide benefits to harvesters delivering to Aleutian Islands shoreplants, the shoreplants, and the communities where those shoreplants are located. This objective is consistent with long-standing policies recommended by the Council and regulations established by NMFS to provide harvesting and processing opportunities for communities in the Aleutian Islands.

Because of their remote location and limited economic alternatives, Aleutian Islands communities rely on harvesting and processing of the nearby fishery resources to support and sustain their communities. This proposed rule is intended to be directly responsive to National Standard 8 of the Magnuson-Stevens Act that states conservation and management measures shall take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities (16 U.S.C. 1851(a)(8)). Additional information on the history leading up to this proposed action and the Council's purpose and need statement are provided in Sections 2.3 and 2.2 of the Analysis, respectively.

The following section of this preamble describes how this proposed rule would revise management of the BSAI Pacific cod fishery to provide harvesting and delivery opportunities for Aleutian Islands communities, while considering and accommodating the harvesting and delivery patterns and needs of other participants in the BSAI Pacific cod fishery.

### The Proposed Rule

This proposed rule would modify several aspects of the BSAI Pacific cod fishery. This proposed rule would set aside a portion of the Aleutian Islands Pacific cod non-CDQ TAC for harvest by vessels directed fishing for Aleutian Islands Pacific cod for processing by Aleutian Islands shoreplants. However, the harvest set-aside would apply only if specific notification and performance requirements are met, and only during the first few months of the fishing year.

In order to implement Amendment 113, this proposed rule would:

- Define the term "Aleutian Islands shoreplant" in regulation;
- Calculate and define the amount of the Aleutian Islands Pacific cod TAC that would be available as a directed fishing allowance (DFA) and the amount that would be available as an incidental catch allowance (ICA);
- Limit the amount of A-season Pacific cod that could be harvested by the trawl CV sector in the Bering Sea prior to March 21 (Bering Sea Trawl CV A-Season Sector Limitation);
- Set aside some or all of the Aleutian Islands Pacific cod non-CDQ DFA for harvest by vessels directed fishing for Aleutian Islands Pacific cod for processing by Aleutian Islands shoreplants from January 1 to March 15 (Aleutian Islands CV Harvest Set-Aside);
- Require that either the City of Adak or the City of Atka annually provide notification to NMFS prior to November 1 of its intent to process Aleutian Islands Pacific cod during the upcoming fishing year in order for the Aleutian Islands CV Harvest Set-Aside and the Bering Sea Trawl CV A-Season Sector Limitation to be effective in the upcoming fishing year; and
- Remove the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside if less than 1,000 mt of the harvest set-aside is delivered to (*i.e.*, landed at) Aleutian Islands shoreplants by February 28, or if the harvest set-aside is fully taken before March 15.

The following sections provide greater detail about the rationale for and effect of the regulatory changes proposed in this rule.

### *Proposed Revisions to Definitions at § 679.2*

This proposed rule would add a definition to § 679.2 for “Aleutian Islands shoreplant” to mean a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska. This proposed definition is needed because the existing term “shoreside processor” in § 679.2 can include processing vessels that are moored or otherwise fixed in a location (*i.e.*, stationary floating processors), but not necessarily located on land. The objective of this proposed rule is to provide an opportunity for fishing communities in the Aleutian Islands, including the processors that are physically located in Aleutian Islands communities, to receive benefits from the Aleutian Islands Pacific cod fishery at levels that are roughly equivalent to the historic share of Aleutian Islands Pacific cod that was harvested by CVs and delivered to Aleutian Islands shoreplants for processing. Given that the definition of shoreside processor does not exclude stationary floating processors, and stationary floating processors do not benefit or provide stability to nearby communities to the same extent as shoreplants, this proposed definition would provide a clear and consistent term for referencing the shoreside processors located on land within the Aleutian Islands.

### *Proposed Revisions to General Limitations at § 679.20*

This proposed rule would add a new paragraph (viii) to § 679.20(a)(7). This new paragraph would include the primary regulatory provisions of this proposed rule. To aid the reader in understanding how this proposed rule would apply, NMFS provides examples of the proposed Aleutian Islands CV Harvest Set-Aside, harvest limitations, and performance measures in this section of the preamble using 2017 harvest specifications for BSAI Pacific cod (81 FR 14773, March 18, 2016). For the remainder of this preamble, unless otherwise specified, all references refer to non-CDQ allocations and apportionments of BSAI Pacific cod.

#### *Calculation of the Aleutian Islands Pacific Cod Non-CDQ Incidental Catch Allowance and Directed Fishing Allowance*

This proposed rule would require that NMFS annually specify an ICA and a DFA derived from the Aleutian Islands non-CDQ TAC. Each year, during the annual harvest specifications process described at § 679.20(c), NMFS would

specify an amount of Aleutian Islands Pacific cod that NMFS estimates will be taken as incidental catch when directed fishing for non-CDQ groundfish other than Pacific cod in the Aleutian Islands. This amount would be the Aleutian Islands ICA and would be deducted from the Aleutian Islands non-CDQ TAC. The amount of the Aleutian Islands non-CDQ TAC remaining after subtraction of the Aleutian Islands ICA would be the Aleutian Islands DFA.

NMFS would specify the Aleutian Islands ICA and DFA so that NMFS could clearly establish the amount of Aleutian Islands Pacific cod that would be used in determining the amount of the harvest set-aside described in the following sections of this preamble. It would also aid the public in knowing how much of the Aleutian Islands non-CDQ TAC is available for directed fishing prior to the start of fishing to aid in the planning of fishery operations.

Although the amount of the Aleutian Islands ICA may vary from year to year, NMFS anticipates that an Aleutian Islands ICA of 2,500 mt likely would be needed to support incidental catch of Pacific cod in other Aleutian Islands non-CDQ directed groundfish fisheries. NMFS examined recent levels of incidental catch of Pacific cod in other Aleutian Islands non-CDQ groundfish fisheries from 2013 through 2015, and has initially determined that 2,500 mt should adequately account for incidental catch if Amendment 113 is approved and implemented. In future years, NMFS would specify the Aleutian Islands ICA in the annual harvest specifications based on recent and anticipated incidental catch of Aleutian Islands Pacific cod in other Aleutian Islands non-CDQ directed groundfish fisheries.

Using the 2017 Aleutian Islands non-CDQ TAC from Table 3 (11,465 mt), and assuming an Aleutian Islands ICA of 2,500 mt, the 2017 Aleutian Islands DFA would equal 8,965 mt (11,465 mt – 2,500 mt = 8,965 mt). Under this proposed rule, the Aleutian Islands DFA would be the maximum amount of Pacific cod available for directed fishing by all non-CDQ fishery sectors in all seasons in the Aleutian Islands.

#### *Bering Sea Trawl CV A-Season Sector Limitation*

As noted earlier in this preamble, trawl CVs harvest almost all of the Aleutian Islands Pacific cod that is received for processing by Aleutian Islands shoreplants. Additionally, the trawl CV sector can harvest its entire allocation of BSAI Pacific cod in the Bering Sea, and in recent years has harvested its A-season BSAI Pacific cod

allocation very early in the A season. In the Bering Sea, the fishery starts in earnest on January 20, with a peak in fishing around mid-February, followed by a slow decline in catch during March. In the Aleutian Islands, the season is significantly shorter, with fishing effort ramping up during the last two weeks in February and peaking in early March, followed by a dramatic decline in mid-March. The Pacific cod fishery in the Aleutian Islands starts later than in the Bering Sea in part because of when Pacific cod aggregate in the Aleutian Islands, allowing efficient harvest by trawl vessels. Because the trawl CV sector can harvest its entire A-season allocation in the Bering Sea and can harvest it very quickly, there may be no Pacific cod available for harvest during the A-season in the Aleutian Islands. Setting aside an amount of the BSAI trawl CV sector A-season allocation for harvest and delivery in the Aleutian Islands would provide the opportunity for vessels, Aleutian Islands shoreplants, and the communities where Aleutian Islands shoreplants are located to receive benefits from a portion of the BSAI Pacific cod fishery.

In recent years, the trawl CV sector has harvested its A-season BSAI Pacific cod allocation very quickly, primarily because the trawl CV sector has been able to harvest almost its entire BSAI Pacific cod allocation in the Bering Sea. For example, in 2014, NMFS closed the trawl CV sector to directed fishing on March 16 (79 FR 15255; March 19, 2014). In 2015, NMFS closed the trawl CV sector to directed fishing on February 27 (80 FR 11332; March 3, 2015). This rapid rate of trawl CV harvest in the Bering Sea restricts potential harvesting and delivery opportunities for trawl CVs that participate in the Aleutian Islands Pacific cod fishery and Aleutian Islands shoreplants during the lucrative A-season.

To prevent the trawl CV sector from harvesting its entire BSAI A-season Pacific cod allocation in the Bering Sea before vessels can harvest Aleutian Islands Pacific cod for processing by Aleutian Islands shoreplants, this proposed rule would establish the Bering Sea Trawl CV A-Season Sector Limitation to limit the amount of the trawl CV sector's A-season allocation that can be harvested in the Bering Sea prior to March 21. The Bering Sea Trawl CV A-Season Sector Limitation would ensure that some of the trawl CV sector's A-season allocation remains available for harvest in the Aleutian Islands by vessels that deliver their catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for

processing. On March 21, the restriction on Bering Sea harvest by the trawl CV sector would be lifted and the remainder, if any, of the BSAI trawl CV A-season allocation could be harvested in either the Bering Sea or the Aleutian Islands (if still open to directed fishing for Pacific cod) and delivered to any eligible processor for processing.

After calculating the Aleutian Islands ICA and DFA, NMFS would calculate the Bering Sea Trawl CV A-Season Sector Limitation and the amount of the trawl CV sector A-season allocation that could be harvested in the Bering Sea prior to March 21. The Bering Sea Trawl CV A-Season Sector Limitation would be an amount equal to the lesser of either the Aleutian Islands DFA (as described above) or 5,000 mt. The Bering Sea Trawl CV A-Season Sector Limitation also would be equivalent to the Aleutian Islands CV Harvest Set-Aside, which would be the amount reserved for harvest by vessels directed fishing for Aleutian Islands Pacific cod for processing by Aleutian Islands shoreplants, described in the following section of this preamble. The amount of the trawl CV sector's A-season allocation that could be harvested in the Bering Sea prior to March 21 would be the amount of Pacific cod that remained after deducting the Bering Sea Trawl CV A-Season Sector Limitation from the BSAI trawl CV sector A-season allocation listed in the annual harvest specifications (and as determined at § 679.20(a)(7)(iv)(A)(1)(i)). NMFS would specify the Bering Sea Trawl CV A-Season Sector Limitation and the amount of the A-season trawl CV allocation that could be harvested in the Bering Sea prior to March 21 in the annual harvest specifications.

The Council considered a range of options on the amount of the Bering Sea Trawl CV A-Season Sector Limitation, and the specific date when the limitation should be lifted. The Council considered amounts for the Bering Sea Trawl CV A-Season Sector Limitation ranging from 3,000 to 7,000 mt. The Council determined and NMFS agrees that a maximum of 5,000 mt is the appropriate amount because it represents a large percentage of the total amount of Pacific cod available to the non-CDQ fishery sectors in recent years, and is in the range necessary to provide benefits to Aleutian Islands fishing communities, including shoreplant operations, when considered in combination with the GHL A-season harvest. Additionally, the Analysis shows that 5,000 mt is the approximate long-term average of the amount of Pacific cod processed at Aleutian Islands shoreplants between 2003 and

2015, when Aleutian Islands shoreplants were operational (Section 2.7.1.2 of the Analysis).

The Council also considered three dates—March 1, 15, and 21—for when the Bering Sea Trawl CV A-Season Sector Limitation should be lifted. Recent trawl CV sector harvest patterns from 2014 and 2015 show that without the limitation on harvests in the Bering Sea in place until March 21, the entire trawl CV allocation could be taken before Aleutian Islands Pacific cod have typically aggregated in early- or mid-March (see Section 2.7.1.1 of the Analysis). The March 21 date would best preserve the opportunity for vessels to continue to fish in the Aleutian Islands without having the entire A-season trawl CV sector allocation taken in the Bering Sea. The March 21 date also would not occur so late in the year that the trawl CV sector would be precluded from fully harvesting its A-season allocation. As shown in Table 30 in Section 2.7.1.1 of the Analysis, in only 3 of the 13 years between 2003 and 2015 did the trawl CV sector take the entire A-season (from January 20 until April 1) to harvest its BSAI Pacific cod A-season allocation. In the other years during this period, on average, the trawl CV sector A-season fishery closed on March 15.

Using the 2017 Aleutian Islands non-CDQ TAC from Table 3 (11,465 mt), and assuming an Aleutian Islands ICA of 2,500 mt, the Aleutian Islands DFA would be 8,965 mt. With a DFA of 8,965 mt, the Bering Sea Trawl CV A-Season Sector Limitation would be 5,000 mt, because 5,000 mt is less than the DFA of 8,965 mt. With a Bering Sea Trawl CV A-Season Sector Limitation of 5,000 mt, the maximum amount of Pacific cod that could be harvested in the Bering Sea by the trawl CV sector during the A-season prior to March 21 would be 31,732 mt (*i.e.*, trawl CV sector A-season allocation of 36,732 mt – 5,000 mt Bering Sea Trawl CV A-Season Sector Limitation = 31,732 mt maximum permissible harvest by the trawl CV sector in the Bering Sea prior to March 21). Conversely, if the 2017 Aleutian Islands non-CDQ TAC was 5,500 mt, with an Aleutian Islands ICA of 2,500 mt and a resulting Aleutian Islands DFA of 3,000 mt, then the Bering Sea Trawl CV A-Season Sector Limitation would be 3,000 mt, because the DFA was less than 5,000 mt, and the maximum amount of Pacific cod that could be harvested in the Bering Sea by the trawl CV sector during the A-season prior to March 21 would be 33,732 mt (trawl CV sector A-season allocation of 36,732 mt – Bering Sea Trawl CV A-Season

Sector Limitation of 3,000 mt = 33,732 mt).

#### Aleutian Islands Catcher Vessel Harvest Set-Aside

This proposed rule would require that all, or some portion, of the Aleutian Islands DFA be set aside for harvest by vessels directed fishing for Aleutian Islands Pacific cod for processing by Aleutian Islands shoreplants. This Aleutian Islands CV Harvest Set-Aside would be available for harvest by vessels using any authorized gear type and that deliver their catch to Aleutian Islands shoreplants for processing. NMFS would account for harvest and processing of Aleutian Islands Pacific cod under the Aleutian Islands CV Harvest Set-Aside separate from, and in addition to, its accounting of Aleutian Islands Pacific cod catch by the nine non-CDQ fishery sectors established under Amendment 85 to the FMP. Because of this separate accounting, the proposed Aleutian Islands CV Harvest Set-Aside would not increase or decrease the amount of BSAI Pacific cod allocated to any of the non-CDQ fishery sectors. The Aleutian Islands CV Harvest Set-Aside would apply from January 1 until March 15 of each year, unless certain notification and performance measures, described in the following section of the preamble, are not satisfied.

The amount of the Aleutian Islands CV Harvest Set-Aside would be calculated as described above for the Bering Sea Trawl CV A-Season Sector Limitation. It would be an amount equal to the lesser of either 5,000 mt or the Aleutian Islands DFA. NMFS would notify the public of the Aleutian Islands CV Harvest Set-Aside through the annual harvest specifications process.

When the Aleutian Islands CV Harvest Set-Aside is set equal to the Aleutian Islands DFA, directed fishing for Pacific cod in the Aleutian Islands could only be conducted by vessels that deliver their catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing. Vessels that do not want to deliver their directed catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing would be prohibited from directed fishing for Pacific cod in the Aleutian Islands during the time the Aleutian Islands CV Harvest Set-Aside is in effect. These vessels would be permitted to conduct directed fishing for groundfish other than Pacific cod in the Aleutian Islands during the time the Aleutian Islands CV Harvest Set-Aside is in effect and their harvests of Pacific cod would accrue toward the Aleutian Islands ICA. CPs would be permitted to



conduct directed fishing for Pacific cod in the Aleutian Islands during the time the Aleutian Islands CV Harvest Set-Aside is in effect as long as they act only as CVs and deliver their directed catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing. CPs also would be permitted to retain Aleutian Islands Pacific cod as incidental catch while directed fishing for groundfish other than Pacific cod and those harvests of Pacific cod would accrue toward the Aleutian Islands ICA.

When the Aleutian Islands DFA is greater than 5,000 mt, and therefore the Aleutian Islands CV Harvest Set-Aside is set equal to 5,000 mt, the difference between the DFA and the Aleutian Islands CV Harvest Set-Aside would be available for directed fishing by all non-CDQ fishery sectors with sufficient A-season allocations and could be processed by any eligible processor. This difference would be called the "Aleutian Islands Unrestricted Fishery." In years when there would be both an Aleutian Islands CV Harvest Set-Aside and an Aleutian Islands Unrestricted Fishery, vessels could conduct directed fishing for Pacific cod in the Aleutian Islands and deliver their catch to Aleutian Islands shoreplants or to any eligible processor for processing as long as the Aleutian Islands Unrestricted Fishery is open to directed fishing. CPs would be permitted to conduct directed fishing for Pacific cod in the Aleutian Islands as long as the Aleutian Islands Unrestricted Fishery is open to directed fishing. NMFS would determine whether the Aleutian Islands Unrestricted Fishery is sufficient to support a directed fishery and would notify the public through a notice in the **Federal Register**.

While the Aleutian Islands CV Harvest Set-Aside is in effect, NMFS would account for Aleutian Islands Pacific cod caught by vessels and delivered to Aleutian Islands shoreplants for processing against the appropriate fishery sector allocation, the ICA or the DFA, and the Aleutian Islands CV Harvest Set-Aside or the Aleutian Islands Unrestricted Fishery. For example, if a pot CV greater than 60 ft LOA conducted directed fishing for Aleutian Islands Pacific cod and delivered that catch to an Aleutian Islands shoreplant for processing while the Aleutian Islands CV Harvest Set-Aside was in effect, NMFS would deduct that Pacific cod from (1) the 60 ft LOA or greater pot CV sector's A-season allocation, and (2) that portion of the Aleutian Islands DFA that is the Aleutian Islands CV Harvest Set-Aside. If that same vessel conducted directed fishing for Aleutian Islands Pacific cod

and delivered that catch offshore while the Aleutian Islands CV Harvest Set-Aside was in effect, NMFS would deduct that Pacific cod from (1) the 60 ft LOA or greater pot CV sector's A-season allocation, and (2) that portion of the Aleutian Islands DFA that is the Aleutian Islands Unrestricted Fishery (if available). If no portion of the Aleutian Islands DFA were available for the Aleutian Islands Unrestricted Fishery, that catch would have to be delivered to an Aleutian Islands shoreplant. If that same vessel conducted directed fishing for sablefish in the Aleutian Islands, retained Pacific cod up to the maximum retainable amount, and delivered its sablefish and Pacific cod catch to an Aleutian Islands shoreplant for processing while the Aleutian Islands CV Harvest Set-Aside was in effect, NMFS would deduct that Pacific cod from the Aleutian Islands ICA, and it would not accrue toward the set-aside.

If certain notification and performance measures are met, the Aleutian Islands CV Harvest Set-Aside would be in effect from January 1 until March 15 of each year. If the entire set-aside was harvested and delivered prior to March 15, the Bering Sea Trawl CV A-Season Sector Limitation and Aleutian Islands CV Harvest Set-Aside would be lifted. The Aleutian Islands CV Harvest Set-Aside would end at noon on March 15 even if the entire set-aside had not been harvested and delivered to Aleutian Islands shoreplants. When the set-aside ends, any remaining Aleutian Islands DFA could be harvested by any non-CDQ fishery sector with remaining A-season allocation, and the harvest could be delivered to any eligible processor. If a vessel had been directed fishing for Aleutian Islands Pacific cod, but had not yet delivered that Pacific cod for processing when the harvest set-aside was lifted, that vessel could deliver its Pacific cod to any eligible processor. If a vessel had been directed fishing for Aleutian Islands Pacific cod, but had not yet delivered that Pacific cod for processing when the Aleutian Islands Unrestricted Fishery closed, but the Aleutian Islands CV Harvest Set-Aside was still in effect, it would be required to deliver that Pacific cod to an Aleutian Islands shoreplant for processing or be in violation of the directed fishing closure.

The Council determined and NMFS agrees that the March 15 date for lifting the Aleutian Islands CV Harvest Set-Aside is preferred for several reasons. On average, March 15 represents the average date of the peak of the Aleutian Islands Pacific cod fishery for CVs. During the period analyzed (2003

through 2015), a significant portion of Aleutian Islands Pacific cod was not delivered shoreside until mid-March (see Table 2–37 of the Analysis). Establishing a date much earlier than March 15 to relieve the Aleutian Islands CV Harvest Set-Aside would not meet the Council's goals to sustain participation in the Aleutian Islands Pacific cod fishery by Aleutian Islands communities. The protections afforded by reserving a portion of the Aleutian Islands Pacific cod non-CDQ TAC for vessels delivering to Aleutian Islands shoreplants would be lifted before the Pacific cod aggregated on the Aleutian Islands fishing grounds.

The Council and NMFS considered earlier dates by which to lift these restrictions, but given historical harvesting and delivery patterns for Aleutian Islands Pacific cod, the longer the Aleutian Islands CV Harvest Set-Aside remains in effect during the A-season each year, the greater the opportunity for complete harvest and delivery of the Aleutian Islands CV Harvest Set-Aside. The March 15 date provides greater social and economic stability for Aleutian Islands fishing communities than earlier dates. Limiting the duration of the Aleutian Islands CV Harvest Set-Aside to March 15 also would provide an opportunity for CPs to harvest Pacific cod, and for CVs to harvest and deliver Pacific cod to CPs or stationary floating processors, before the end of the A season. The proposed March 15 date balances the opportunities for all participants. Additional information is provided in Section 2.7.2.4 of the Analysis.

The Council and NMFS considered different maximum amounts for the Aleutian Islands CV Harvest Set-Aside: 3,000 mt, 5,000 mt, and 7,000 mt. For reasons described under the Bering Sea Trawl CV A-Season Sector Limitation section of this preamble, they determined 5,000 mt represents an adequate and appropriate amount for the Aleutian Islands CV Harvest Set-Aside. Under this proposed rule, any amount of the Aleutian Islands DFA above the Aleutian Islands CV Harvest Set-Aside would be available to any sector for directed fishing and could be processed by any eligible processor. By limiting the Aleutian Islands CV Harvest Set-Aside to a maximum of 5,000 mt, additional harvesting and processing opportunities would be provided to CPs, and CVs delivering to CPs or stationary floating processors, when the Aleutian Islands DFA is greater than 5,000 mt.

Continuing with the example above for calculating the Bering Sea Trawl CV A-Season Sector Limitation, and using amounts from the 2017 annual

groundfish harvest specifications, the Aleutian Islands DFA would be 8,965 mt after deducting the Aleutian Islands ICA from the Aleutian Islands non-CDQ TAC (11,465 mt – 2,500 mt = 8,965 mt). Because the DFA is larger than 5,000 mt, the Aleutian Islands CV Harvest Set-Aside would be 5,000 mt. This would also be the amount of the Bering Sea Trawl CV A-Season Sector Limitation.

The remainder of the Aleutian Islands DFA after deducting the Aleutian Islands CV Harvest Set-Aside would be available to any sector prior to March 15, and could be processed by any eligible processor. For the example described above, this Aleutian Islands Unrestricted Fishery would be 3,965 mt (8,965 mt – 5,000 mt = 3,965 mt). This means that until March 15, 5,000 mt could be harvested by vessels for processing by Aleutian Islands shoreplants, and 3,965 mt could be harvested by vessels for processing by any eligible processor.

#### Measures To Prevent Stranding of Aleutian Islands Non-CDQ Pacific Cod TAC

Stranding is a term sometimes used to describe TAC that remains unharvested due to regulations. The Council recommended performance measures to prevent the stranding of Aleutian Islands non-CDQ Pacific cod TAC. These measures would make the Aleutian Islands CV Harvest Set-Aside available to other sectors if the set-aside was not requested, if limited processing occurred at Aleutian Islands shoreplants, or if the Aleutian Islands CV Harvest Set-Aside was taken before March 15.

The first performance measure would require that either the City Manager of the City of Adak or the City Manager of the City of Atka notify NMFS of its intent to process Aleutian Islands Pacific cod in the upcoming fishing year. If neither city submits such notification to NMFS, the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside would not be in effect for the upcoming fishing year. The Council's recommendation for this proposed measure did not specify who from Adak or Atka would be responsible for notifying NMFS of the intent to process Pacific cod. Therefore, NMFS proposes that the City Manager would be the person responsible for submitting the required notification to NMFS because both Adak and Atka have a person in the role of City Manager. NMFS solicits public comment on whether the City Manager is the appropriate person to provide such notification.

The Council recommended allowing the cities of Adak and Atka to voluntarily notify NMFS prior to November 1 if they do not intend to process Aleutian Islands Pacific cod in the upcoming year. NMFS considered this recommendation, but decided it was not necessary to state in regulations. While Adak or Atka could notify NMFS prior to November 1 that it does not intend to process, there would be no penalty if the city reconsidered and decided later, but before November 1, that it would process Aleutian Islands Pacific cod and notified NMFS accordingly.

This proposed rule would require annual notification in the form of a letter or memorandum signed by the City Manager of the city intending to process Aleutian Islands Pacific cod in the upcoming fishing year. This signed letter or memorandum would be the official notification of intent. This proposed rule would require that the official notification of intent be postmarked no later than October 31. NMFS would require that the official notification of intent be submitted to the NMFS Alaska Regional Administrator by certified mail through the United States Postal Service. Certified mail would provide the city with a proof of postmark date and date of receipt by NMFS Alaska Region. Because the official notification of intent must be postmarked by October 31, and NMFS may not receive the official notification of intent in a timely manner owing to weather, flight schedules, and other unpredictable circumstances with mail service in remote Alaskan communities, this proposed rule would also require the City Manager to submit an electronic copy of the official notification of intent and the certified mail receipt with postmark via email to NMFS. Email submission of electronic copies of the official notification of intent and the certified mail receipt with postmark by October 31 would provide NMFS with the timely information it needs to manage the upcoming fisheries. Email notification would be in addition to notification via certified U.S. Mail; email notification would not replace the requirement for notification through the U.S. Postal Service.

A city's notification of intent to process Aleutian Islands Pacific cod would be required to contain the following information: Date, name of city, a statement of intent to process Aleutian Islands Pacific cod, statement of calendar year during which the city intends to process Aleutian Islands Pacific cod, and the signature of and contact information for the City Manager of the city whose shoreplant is

intending to process Aleutian Islands Pacific cod.

On or shortly after November 1, the Regional Administrator would send a signed and dated letter either confirming receipt of the city's notification of their intent to process Aleutian Islands Pacific cod, or informing the city that notification was not received by the deadline.

Of the two notification dates considered, November 1 and December 15, the Council preferred November 1 because it would provide more time for offshore processors and non-Aleutian Islands shoreplants to make the necessary arrangements to harvest and process Aleutian Islands Pacific cod if no Aleutian Islands shoreplants would be operating in the upcoming year. A notification date of December 15 would not give vessels and offshore processors sufficient time to prepare for the harvest and processing of the full amount of the Aleutian Islands Pacific cod non-CDQ TAC if no Bering Sea Trawl CV A-Season Sector Limitation or Aleutian Islands CV Harvest Set-Aside applied.

While this proposed rule would make the set-aside available for processing by any shoreplant west of 170° W. longitude in the Aleutian Islands, the Council recognized that only the City of Adak and the City of Atka could be prepared to process Aleutian Islands Pacific cod; therefore, the Council specified that the notification requirement would only be required from either Adak or Atka and not another city that might have an Aleutian Islands shoreplant in the future. The shoreplants in Adak and Atka are likely to have the capacity to process sufficient Pacific cod to meet the other performance measures described below. Although another Aleutian Islands shoreplant may process Pacific cod from the Aleutian Islands CV Harvest Set-Aside, the set-aside would only go into effect if Adak or Atka, or both, submitted a notice of intent to process in the upcoming fishing year. The Council could consider requiring notification from additional Aleutian Island cities with shoreplants in the future, if they develop and the need arises.

The second performance measure would remove the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside for the remainder of the A-season if less than 1,000 mt of Aleutian Islands CV Harvest Set-Aside is delivered to Aleutian Islands shoreplants by February 28. This proposed performance measure is intended to ensure that shoreside processing is actually occurring at a time early

enough in the A season to allow other sectors to come into the fishery if it is not. Under this proposed rule, there is incentive for an Aleutian Islands city to provide a notice of intent to process Pacific cod, even if they are uncertain at the time the notice of intent is due as to whether they will do so, because there is no penalty to the Aleutian Islands city or shoreplant for stating their intention to process, but then not doing so. This performance measure would release the Aleutian Islands CV Harvest Set-Aside and make the remaining amount of the set-aside available to other sectors if for some reason, the Aleutian Islands shoreplant were unable to process Pacific cod. The Council chose 1,000 mt as the threshold because in 9 of 11 years when the Adak shoreplant was operational (the primary Aleutian Islands shoreplant), it processed 1,000 mt of Pacific cod by February 28 (see Section 2.7.2.5 of the Analysis). The Council chose February 28 as the date by which the minimum processing threshold must be met because it would lift the restrictions a couple of weeks earlier than under the set-aside, allowing enough time for additional processing capacity to move into the Aleutian Islands Pacific cod fishery in years when harvesters and Aleutian Islands shoreplants are operating at a level that is not likely to result in the complete harvesting and processing of the Aleutian Islands CV Harvest Set-Aside.

The third performance measure would suspend the Bering Sea Trawl CV A-Season Sector Limitation for the remainder of the year if the entire

Aleutian Islands Harvest Set-Aside (5,000 mt using the 2017 example) is fully harvested and processed by Aleutian Islands shoreplants before March 15. This performance measure would recognize that if the entire Aleutian Islands CV Harvest Set-Aside is harvested and delivered, there would be no reason to continue to restrict trawl CV sector harvests in the Bering Sea because the intent for the set-aside and sector limitation would have been met.

#### *Harvest Specifications Process To Announce BSAI A-Season Pacific Cod Limits Implemented by Amendment 113*

NMFS typically publishes the proposed harvest specifications for groundfish of the BSAI in the **Federal Register** in November each year (for example, the proposed 2016–2017 harvest specifications are available at <https://alaskafisheries.noaa.gov/sites/default/files/80fr76425.pdf>). Following a public comment period, the Council modifies (if necessary) and adopts final harvest specifications at its December Council meeting and NMFS publishes the final harvest specifications early in the following year (for example, the final 2016–2017 harvest specifications are available at <https://alaskafisheries.noaa.gov/sites/default/files/81fr14773.pdf>). For fisheries that will begin before the final harvest specifications are published, such as BSAI A-season Pacific cod, NMFS publishes a temporary rule to announce and adjust (if necessary) the final amounts for those fisheries. This adjustment is typically published in the **Federal Register** in late December or early January (for example, see <https://>

[alaskafisheries.noaa.gov/sites/default/files/81fr184.pdf](https://alaskafisheries.noaa.gov/sites/default/files/81fr184.pdf)).

If this proposed rule is approved and implemented, during the annual harvest specifications process described above, NMFS would publish in the proposed harvest specifications the amounts for the Aleutian Islands ICA, DFA, CV Harvest Set-Aside, and Unrestricted Fishery, as well as the Bering Sea Trawl CV A-Season Sector Limitation, and the amount available for harvest by trawl CVs in the Bering Sea while the set-aside is in effect. These amounts would be published in a separate table to supplement the table in the harvest specifications that describes the final gear shares and allowances of the BSAI Pacific cod TAC for the upcoming year. NMFS also would publish a notice in the **Federal Register** shortly after November 1 announcing whether the Aleutian Islands CV Harvest Set-Aside and Bering Sea Trawl CV A-Season Sector Limitation were going into effect for the upcoming fishing year, and whether the harvest limits in the supplemental table would apply. If necessary, NMFS would publish in the **Federal Register** an adjustment of the BSAI A-season Pacific cod limits for the upcoming year after the Council adopts the harvest specifications in December.

For 2017, NMFS proposes to amend the 2017 harvest specifications by adding the following table to the harvest specifications. If Amendment 113 and this proposed rule are approved, and if NMFS receives timely notification of intent to process from either Adak or Atka, the harvest limits in Table 4 would be in effect in 2017.

**TABLE 4—2017 BSAI A-SEASON PACIFIC COD LIMITS THAT WOULD BE EFFECTIVE UNDER AMENDMENT 113 TO THE FMP IF EITHER THE CITY OF ADAK OR THE CITY OF ATKA NOTIFIED NMFS PRIOR TO NOVEMBER 1 OF ITS INTENT TO PROCESS PACIFIC COD IN THE UPCOMING YEAR**

2017 Allocations under Aleutian Islands CV Harvest Set-Aside	Amount (mt)
AI non-CDQ TAC .....	11,465
AI ICA .....	2,500
AI DFA .....	8,965
BSAI non-CDQ TAC .....	213,141
BSAI Trawl CV A-Season Allocation .....	36,732
BSAI Trawl CV A-Season Allocation minus Sector Limitation (available prior to March 21) .....	31,732
BS Trawl CV A-Season Sector Limitation .....	5,000
AI CV Harvest Set-Aside .....	5,000
AI Unrestricted Fishery .....	3,965

#### **Classification**

Pursuant to Section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that Amendment 113 to the FMP and this proposed rule are consistent with the FMP, other

provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

#### *Initial Regulatory Flexibility Analysis*

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by Section 603 of the

Regulatory Flexibility Act (RFA). The IRFA describes the economic impact the proposed rule, if adopted, would have on small entities. The IRFA describes the reasons why this action is being proposed; the objectives and legal basis for the proposed rule; the number and description of small entities directly regulated by the proposed action; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; impacts of the action on small entities; and any significant alternatives to the proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and would minimize any significant adverse impacts of the proposed rule on small entities. Descriptions of the proposed action, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

#### Number and Description of Small Entities Directly Regulated by the Proposed Action

This proposed rule would directly regulate three groups of entities. First, this proposed rule would directly regulate trawl CVs harvesting Pacific cod in the BSAI because this proposed rule could limit how much Pacific cod those trawl CVs could harvest in the Bering Sea, and it could prohibit trawl CVs from participating in the Aleutian Islands Pacific cod fishery if they do not deliver their Pacific cod catch to Aleutian Islands shoreplants. Second, this proposed rule would directly regulate all non-trawl CVs who are harvesting Pacific cod in the Aleutian Islands because it could prohibit those non-trawl CVs from participating in the Aleutian Islands Pacific cod fishery if they do not deliver their Pacific cod catch to Aleutian Islands shoreplants. Third, this proposed rule would directly regulate all CPs harvesting Pacific cod in the Aleutian Islands because this proposed rule could limit how much Pacific cod those CPs can harvest and process in the Aleutian Islands. This proposed rule would not directly regulate the City of Adak or the City of Atka because it does not impose a requirement on those cities, and this proposed rule would not directly regulate entities participating in the harvesting and processing of Pacific cod managed under the GHL fisheries in the Bering Sea or Aleutian Islands.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their

affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

Based on the best available and most recent complete data from 2012 through 2014, between 10 and 16 CPs, and an estimated 43 CVs (trawl and non-trawl) could be directly regulated by this action in the BSAI. Of these, no CP is estimated to be a small entity, while 6 trawl CVs and 26 non-trawl CVs are estimated to be small entities based on the best available data on the gross receipts from these entities and their known affiliates. Therefore, a total of 32 vessels considered to be small entities would be directly regulated by this action. The IRFA assumes that each vessel is a unique entity; therefore, the total number of directly regulated entities may be an overestimate because some vessels are likely affiliated through common ownership. These potential affiliations are not known with the best available data and cannot be predicted.

#### Impacts of the Action on Small Entities

Under this proposed rule, a portion of the Aleutian Islands non-CDQ Pacific cod TAC would be reserved for CVs harvesting Aleutian Islands Pacific cod and delivering their catch to Aleutian Islands shoreplants for processing during a portion of the year. The trawl CV sector has been the most active in the Aleutian Islands Pacific cod fishery among all of the CV sectors. Therefore, small entities in the trawl CV sector, as well as other CVs in other sectors that are small entities, that deliver Pacific cod to Aleutian Islands shoreplants would be likely to benefit from implementation of this proposed rule. Small entities in the trawl CV sector that harvest Pacific cod exclusively in the Bering Sea could experience some negative effects because the Bering Sea Trawl CV A-Season Sector Limitation established by this proposed rule would restrict the harvest of a portion of the trawl CV sector allocation in the Bering Sea for a portion of the year.

#### Description of Significant Alternatives Considered

The RFA requires identification of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and

that would minimize any significant economic impact of the proposed rule on small entities. The Council considered a status quo alternative and one action alternative with several options and suboptions. The combination of options and suboptions under the action alternative effectively provided a broad range of potential alternative approaches to status quo management. Under the status quo, there would be a continued risk that fishing communities in the Aleutian Islands would not be able to sustainably participate in the Aleutian Islands Pacific cod fishery. The action alternative does not affect any non-CDQ fishery sector's Pacific cod allocation, or the TAC of Aleutian Islands Pacific cod. The action alternative would accomplish the stated objectives of prioritizing a portion of the Aleutian Islands Pacific cod TAC for harvest by CVs that deliver their catch to Aleutian Islands shoreplants for processing, while minimizing adverse economic impacts on small entities and the potential for stranding a portion of the Aleutian Islands Pacific cod TAC.

The Council considered a range of dates, varying amounts of Aleutian Islands Pacific cod for the harvest set-aside and Bering Sea sector limitation, and a suite of mechanisms to relieve the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside under the action alternative. The Council recommended the proposed combination of dates, harvest set-aside amounts, harvest limitations, and provisions to relieve the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside that would give fishery participants sufficient opportunity to harvest and deliver Aleutian Islands Pacific cod to the benefit of Aleutian Islands communities and shoreplants without stranding the trawl CV sector allocation or the Aleutian Islands Pacific cod TAC. The Council recommended and NMFS is proposing selected options in the action alternative such that if specific notification or minimum harvest and processing requirements are not met by a specific date, the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside would either not go into effect in the upcoming year, or they would be relieved for the remainder of the year.

The Council considered and rejected two options under the action alternative. One option would have required that if less than 50 percent of the Aleutian Islands CV Harvest Set-Aside had been landed at an Aleutian Islands shoreplant by a given date,

ranging from February 28 to March 15, the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside would be lifted. Instead, the Council selected an option that would require a minimum weight (1,000 mt) rather than a minimum percentage of the Aleutian Islands CV Harvest Set-Aside that must be landed at an Aleutian Islands shoreplant for processing by a given date (February 28) for the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside to remain in place.

The Council also considered and rejected an option that would have exempted certain processing vessels with a history of processing Aleutian Islands Pacific cod in at least 12 out of 15 recent years from the proposed restrictions on processing and would have allowed them to process up to 2,000 mt of Aleutian Islands Pacific cod while the set-aside was in effect. This option could have allowed up to 10 processing vessels to continue to process Pacific cod during the A-season, limiting the effectiveness of this proposed rule to minimize the risk of a diminished historical share of Aleutian Islands Pacific cod being delivered to Aleutian Islands shoreplants and the communities where those shoreplants are located.

#### Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Action

NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

#### Projected Recordkeeping and Reporting Requirements

The recordkeeping, reporting, and other compliance requirements would be increased slightly under this proposed rule. This proposed rule contains new requirements for the cities of Adak and Atka to provide notice to NMFS of its intent to process Aleutian Islands Pacific cod in the upcoming fishing year in order for the Bering Sea Trawl CV A-Season Sector Limitation and the Aleutian Islands CV Harvest Set-Aside to apply.

#### Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under OMB Control Number 0648–ANIP, a temporary new information

collection that will be merged into OMB Control Number 0648–0213 upon approval by OMB. Public reporting burden for Notification of Intent to Process Aleutian Islands Pacific cod is estimated to average 30 minutes per individual response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the ADDRESSES above, and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 26, 2016.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.2, add a definition for “Aleutian Islands shoreplant” in alphabetical order to read as follows:

#### § 679.2 Definitions.

\* \* \* \* \*

*Aleutian Islands shoreplant* means a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska.

\* \* \* \* \*

■ 3. In § 679.20, add paragraph (a)(7)(viii) to read as follows:

#### § 679.20 General limitations.

\* \* \* \* \*

(a) \* \* \*

(7) \* \* \*

(viii) *Aleutian Islands Pacific cod Catcher Vessel Harvest Set-Aside Program—(A) Calculation of the Aleutian Islands Pacific cod non-CDQ ICA and DFA.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify the Aleutian Islands Pacific cod non-CDQ incidental catch allowance and directed fishing allowance from the Aleutian Islands Pacific cod non-CDQ TAC as follows. Shortly after November 1 of each year, NMFS will announce through notice in the **Federal Register** whether the ICA and DFA will be in effect for the upcoming fishing year.

(1) *Aleutian Islands Pacific cod non-CDQ incidental catch allowance.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify an amount of Aleutian Islands Pacific cod that NMFS estimates will be taken as incidental catch in non-CDQ directed fisheries for groundfish other than Pacific cod in the Aleutian Islands. This amount will be the Aleutian Islands Pacific cod non-CDQ incidental catch allowance and will be deducted from the aggregate portion of Pacific cod TAC annually allocated to the non-CDQ sectors identified in paragraph (a)(7)(ii)(A) of this section.

(2) *Aleutian Islands Pacific cod non-CDQ directed fishing allowance.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify the Aleutian Islands Pacific cod non-CDQ directed fishing allowance. The Aleutian Islands Pacific cod non-CDQ directed fishing allowance will be the amount of the Aleutian Islands Pacific cod TAC remaining after subtraction of the Aleutian Islands Pacific cod CDQ reserve and the Aleutian Islands Pacific cod non-CDQ incidental catch allowance.

(B) *Calculation of the Aleutian Islands CV Harvest Set-Aside and Aleutian Islands Unrestricted Fishery.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will

specify the Aleutian Islands CV Harvest Set-Aside and the Aleutian Islands Unrestricted Fishery. The Aleutian Islands CV Harvest Set-Aside will be an amount of Pacific cod equal to the lesser of either the Aleutian Islands Pacific cod non-CDQ directed fishing allowance as determined in paragraph (a)(7)(viii)(A)(2) of this section or 5,000 mt. The Aleutian Islands Unrestricted Fishery will be the amount of Pacific cod that remains after deducting the Aleutian Islands CV Harvest Set-Aside from the Aleutian Islands Pacific cod non-CDQ directed fishing allowance as determined in paragraph (a)(7)(viii)(A)(2) of this section. Shortly after November 1 of each year, NMFS will announce through notice in the **Federal Register** whether the Aleutian Islands CV Harvest Set-Aside and the Aleutian Islands Unrestricted Fishery will be in effect for the upcoming fishing year.

(C) *Calculation of the Bering Sea Trawl CV A-Season Sector Limitation.* Each year, during the annual harvest specifications process set forth at paragraph (c) of this section, NMFS will specify the Bering Sea Trawl CV A-Season Sector Limitation and the amount of the trawl CV sector's A-season allocation that could be harvested in the Bering Sea subarea prior to March 21. The Bering Sea Trawl CV A-Season Sector Limitation will be an amount of Pacific cod equal to the lesser of either the Aleutian Islands Pacific cod non-CDQ directed fishing allowance as determined in paragraph (a)(7)(viii)(A)(2) of this section or 5,000 mt. The amount of the trawl CV sector's A-season allocation that could be harvested in the Bering Sea subarea prior to March 21 will be the amount of Pacific cod that remains after deducting the Bering Sea Trawl CV A-Season Sector Limitation from the amount of BSAI Pacific cod allocated to the trawl CV sector A-season as determined in paragraph (a)(7)(iv)(A)(1)(i) of this section. Shortly after November 1 of each year, NMFS will announce through notice in the **Federal Register** whether the Bering Sea Trawl CV A-Season Sector Limitation will be in effect for the upcoming fishing year.

(D) *Annual notification of intent to process Aleutian Islands Pacific cod—*

(1) *Submission of notification.* The provisions of paragraph (a)(7)(viii)(E) of this section will apply if the City Manager of either the City of Adak or the City of Atka submits to NMFS a timely and complete notification of its intent to process Aleutian Islands Pacific cod during the upcoming fishing year. This notification must be

submitted annually to NMFS using the methods described below.

(2) *Submittal method.* An official notification of intent to process Aleutian Islands Pacific cod during the upcoming fishing year in the form of a letter or memorandum signed by the City Manager of either the City of Adak or the City of Atka must be submitted by certified mail through the United States Postal Service to: NMFS Alaska Region, Attn: Regional Administrator, P. O. Box 21668, Juneau, AK 99802. The City Manager must also submit an electronic copy of the official notification of intent and the certified mail receipt with postmark via email to [nmfs.akr.inseason@noaa.gov](mailto:nmfs.akr.inseason@noaa.gov). Email submission is in addition to submission via U.S. Postal Service; email submission does not replace the requirement to submit an official notification of intent via U.S. Postal Service.

(3) *NMFS confirmation.* On or shortly after November 1, the Regional Administrator will send a signed and dated letter to the City Manager of the City of Adak or the City of Atka either confirming NMFS' receipt of its official notification of intent to process Aleutian Islands Pacific cod, or informing the city that NMFS did not receive notification by the deadline.

(4) *Deadline.* The official notification of intent to process Aleutian Islands Pacific cod for the upcoming fishing year must be postmarked no later than October 31 of each fishing year in order for the provisions of paragraph (a)(7)(viii)(E) of this section to apply during the upcoming fishing year. Notifications of intent postmarked on or after November 1 will not be accepted by the Regional Administrator. The electronic copy of the official notification of intent and certified mail receipt with postmark must be submitted to NMFS via email dated no later than October 31 of each fishing year in order for the provisions of paragraph (a)(7)(viii)(E) of this section to apply during the upcoming fishing year.

(5) *Contents of notification.* A notification of intent to process Aleutian Islands Pacific cod for the upcoming fishing year must contain the following information:

- (i) Date,
- (ii) Name of city,
- (iii) Statement of intent to process Aleutian Islands Pacific cod,
- (iv) Identification of the fishing year during which the city intends to process Aleutian Island Pacific cod, and
- (v) Signature of and contact information for the City Manager of the city intending to process Aleutian Islands Pacific cod.

(E) *Aleutian Islands community protections for Pacific cod.* If the City Manager of the City of Adak or the City Manager of the City of Atka submits a timely and complete notification in accordance with paragraph (a)(7)(viii)(D) of this section, then the following provisions will apply for the fishing year following the submission of the timely and complete notification:

(1) *Bering Sea Trawl CV A-Season Sector Limitation.* Prior to March 21, the harvest of Pacific cod by the trawl CV sector in the Bering Sea subarea is limited to an amount equal to the trawl CV sector A-season allocation as determined in paragraph (a)(7)(iv)(A)(1)(i) of this section minus the Bering Sea Trawl CV A-Season Sector Limitation as determined in paragraph (a)(7)(viii)(C) of this section. If, after the start of the fishing year, the provisions of paragraphs (a)(7)(viii)(E)(4) or (5) of this section are met, this paragraph (a)(7)(viii)(E)(1) will not apply for the remainder of the fishing year.

(2) *Aleutian Islands Catcher Vessel Harvest Set-Aside.* Prior to March 15, only catcher vessels that deliver their catch of Aleutian Islands Pacific cod to Aleutian Islands shoreplants for processing may directed fish for that portion of the Aleutian Islands Pacific cod non-CDQ directed fishing allowance that is specified as the Aleutian Islands Catcher Vessel Harvest Set-Aside in paragraph (a)(7)(viii)(B) of this section. If, after the start of the fishing year, the provisions of paragraph (a)(7)(viii)(E)(4) of this section are met, this paragraph (a)(7)(viii)(E)(2) will not apply for the remainder of the fishing year.

(3) *Aleutian Islands Unrestricted Fishery.* Prior to March 15, vessels otherwise authorized to directed fish for Pacific cod in the Aleutian Islands may directed fish for that portion of the Aleutian Islands Pacific cod non-CDQ directed fishing allowance that is specified as the Aleutian Islands Unrestricted Fishery as determined in paragraph (a)(7)(viii)(B) of this section and may deliver their catch to any eligible processor.

(4) *Minimum Aleutian Islands shoreplant landing requirement.* If less than 1,000 mt of the Aleutian Islands Catcher Vessel Harvest Set-Aside is landed at Aleutian Islands shoreplants prior to February 28, then paragraphs (a)(7)(viii)(E)(1) and (2) of this section will not apply for the remainder of the fishing year.

(5) *Harvest of Aleutian Islands Catcher Vessel Harvest Set-Aside.* If the Aleutian Islands Catcher Vessel Harvest Set Aside is fully harvested prior to March 15, then paragraph

(a)(7)(viii)(E)(1) of this section will not apply for the remainder of the fishing year.

\* \* \* \* \*

[FR Doc. 2016-18074 Filed 7-29-16; 8:45 am]

**BILLING CODE 3510-22-P**



# Notices

Federal Register

Vol. 81, No. 147

Monday, August 1, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Document Number AMS–NOP–16–0049; NOP–16–07]

#### Notice of Meeting of the National Organic Standards Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, (5 U.S.C. App.), the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is announcing a meeting of the National Organic Standards Board (NOSB) to assist the USDA in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of Organic Foods Production Act.

**DATES:** The Board will receive public comments via webinar on November 3, 2016 from 1:00 p.m. to approximately 4:00 p.m. Eastern Time (ET). A face-to-face meeting will be held November 16–18, 2016, from 8:30 a.m. to approximately 6:00 p.m. ET. The deadline to submit written comments and/or sign up for oral comment at either the webinar or face-to-face meeting is 11:59 p.m. ET, October 26, 2016.

**ADDRESSES:** The November 3, 2016 webinar is virtual and will be accessed via the internet and/or phone. Access information will be available on the AMS Web site prior to the webinar. The November 16–18, 2016 meeting will take place at the Chase Park Plaza Hotel, 212 N. Kingshighway Blvd., St. Louis, MO 63108. Detailed information pertaining to the webinar and face-to-face meeting, including instructions about providing written and oral

comments can be found at [www.ams.usda.gov/NOSBMeetings](http://www.ams.usda.gov/NOSBMeetings).

**FOR FURTHER INFORMATION CONTACT:** Ms. Michelle Arsenault, Advisory Committee Specialist, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2642–S, Mail Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; Email: [nosb@ams.usda.gov](mailto:nosb@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** The NOSB makes recommendations to the Department of Agriculture about whether substances should be allowed or prohibited in organic production and/or handling, assists in the development of standards for organic production, and advises the Secretary on other aspects of the implementation of the Organic Foods Production Act (7 U.S.C. 6501–6522). The public meeting allows the NOSB to discuss and vote on proposed recommendations to the USDA, receive updates from the USDA National Organic Program (NOP) on issues pertaining to organic agriculture, and receive comments from the organic community. The meeting is open to the public. All meeting documents, including the meeting agenda, NOSB proposals and discussion documents, instructions for submitting and viewing public comments, and instructions for requesting time for oral comments will be available on the AMS Web site at [www.ams.usda.gov/NOSBMeetings](http://www.ams.usda.gov/NOSBMeetings). Please check the Web site periodically for updates. Meeting topics will encompass a wide range of issues, including: Substances petitioned for addition to or deletion from the National List of Allowed and Prohibited Substances (National List), substances on the National List that require NOSB review before their 2018 sunset dates, and guidance on organic policies. At this meeting, the NOSB will complete its review of substances that have a sunset date in 2018. Participants and attendees may take photos and video at the meeting, but not in a manner that disturbs the proceedings.

**Public Comments:** Comments should address specific topics noted on the meeting agenda.

**Written comments:** Written public comments will be accepted on or before 11:59 p.m. ET October 26, 2016 via <http://www.regulations.gov>. Comments submitted after this date will be provided to the NOSB, but Board members may not have adequate time to

consider those comments prior to making recommendations. The NOP strongly prefers comments to be submitted electronically; however, written comments may also be submitted (*i.e.* postmarked) by the deadline, via mail to the person listed under **FOR FURTHER INFORMATION**.

**Oral Comments:** The NOSB is providing the public multiple dates and opportunities to provide oral comments and will accommodate as many individuals and organizations as time permits. Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. ET, October 26, 2016, and can only register for one speaking slot: Either during the webinar, November 3, 2016, or at the face-to-face meeting, November 16–18, 2016. Once the schedule is full, individuals will be added to a waiting list. Instructions for registering and participating in the webinar can be found at [www.ams.usda.gov/NOSBMeetings](http://www.ams.usda.gov/NOSBMeetings).

**Meeting Accommodations:** The meeting hotel is ADA Compliant, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public meeting, please notify the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for reasonable accommodation will be made on a case-by-case basis.

Dated: July 26, 2016.

**Elanor Starmer,**

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–18107 Filed 7–29–16; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### Submission for OMB Review; Comment Request

July 27, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 31, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Food Safety and Inspection Service

*Title:* Import of Undenatured Inedible Product.

*OMB Control Number:* 0583-0161.

*Summary of Collection:* The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and egg products are safe, wholesome, unadulterated, and properly labeled and packaged. Foreign governments are to petition FSIS for approval to import undenatured inedible egg products into the United States.

*Need and Use of the Information:* FSIS will collect the information from firms using form FSIS 9540-4, "Permit Holder—Importation of Undenatured Inedible Products" for the undenatured inedible product that they are importing

into the United States. FSIS will use the information on the form to keep track of the movement of imported undenatured inedible meat and egg products.

*Description of Respondents:* Business or other-for profit.

*Number of Respondents:* 20.

*Frequency of Responses:* Reporting: One time.

*Total Burden Hours:* 667.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2016-18081 Filed 7-29-16; 8:45 am]

**BILLING CODE 3410-DM-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

**AGENCY:** Forest Service, USDA

**ACTION:** Notice of meetings.

**SUMMARY:** The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule Committee (Committee) will meet in Washington, DC. Attendees may also participate via webinar and conference call. The Committee operates in compliance with the Federal Advisory Committee Act (FACA). Committee information can be found by visiting the Committee's Web site at: <http://www.fs.usda.gov/main/planningrule/committee>.

**DATES:** The meeting will be held in-person and via webinar/conference call on the following dates and times:

- Tuesday, August 30, 2016, from 8:30 a.m. to 5:00 p.m. EST
- Wednesday, August 31, 2016, from 8:30 a.m. to 5:00 p.m. EST
- Thursday, September 1, 2016, from 8:30 a.m. to 2:00 p.m. EST

All meetings are subject to cancellation. For updated status of meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** The meeting will be held at the Forest Service International Programs Office, 1 Thomas Circle, Suite 400, Washington, DC For anyone who would like to attend via webinar and/or conference call, please visit the Web site listed above or contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including

names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the USDA Forest Service Washington Office—Yates Building. Please call ahead to facilitate entry into the building.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Helwig, Committee Coordinator, by phone at 202-205-0892, or by email at [jahelwig@fs.fed.us](mailto:jahelwig@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to provide:

1. Continued deliberations on formulating advice for the Secretary,
2. Discussion of Committee work group findings,
3. Hearing public comments, and
4. Administrative tasks.

This meeting is open to the public. The agenda will include time for people to make oral comments of three minutes or less. Individuals wishing to make an oral comment should submit a request in writing by August 26, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Jennifer Helwig, USDA Forest Service, Ecosystem Management Coordination, 201 14th Street SW., Mail Stop 1104, Washington, DC 20250-1104, or by email at [jahelwig@fs.fed.us](mailto:jahelwig@fs.fed.us). The agenda and summary of the meeting will be posted on the Committee's Web site within 21 days of the meeting.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 22, 2016.

**Leslie A.C. Weldon,**

*Deputy Chief, National Forest System.*

[FR Doc. 2016-18121 Filed 7-29-16; 8:45 am]

**BILLING CODE 3411-15-P**

**DEPARTMENT OF COMMERCE****International Trade Administration****Initiation of Five-Year (“Sunset”) Review**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”), the Department of Commerce (“the Department”) is automatically initiating the five-year review (“Sunset Review”) of the antidumping and countervailing duty (“AD/CVD”) order(s) listed below. The International Trade Commission (“the Commission”) is publishing concurrently with this notice its notice

of *Institution of Five-Year Review* which covers the same order(s).

**DATES:** *Effective Date:* August 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:****Background**

The Department’s procedures for the conduct of Sunset Reviews are set forth

in its *Procedures for Conducting Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department’s conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

**Initiation of Review**

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–570–836 .....	731–TA–718	PRC .....	Glycine, (4th Review) .....	Jacqueline Arrowsmith, (202) 482–5255.
A–580–839 .....	731–TA–825	Republic of Korea ..	Polyester Staple Fiber, (3rd Review) .....	David Goldberger, (202) 482–4136.
A–583–833 .....	731–TA–826	Taiwan .....	Polyester Staple Fiber, (3rd Review) .....	David Goldberger, (202) 482–4136.

**Filing Information**

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department’s regulations, the Department’s schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department’s Web site at the following address: <http://enforcement.trade.gov/sunset/>. All submissions in these Sunset Reviews must be filed in accordance with the Department’s regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”), can be found at 19 CFR 351.303.<sup>1</sup>

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.<sup>2</sup> Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in these segments.<sup>3</sup> The

formats for the revised certifications are provided at the end of the *Final Rule*. The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).<sup>4</sup> Parties are advised to review the final rule, available at <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at <http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt>, prior to submitting factual information in these segments.<sup>5</sup>

*Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (“*Final Rule*”) (amending 19 CFR 351.303(g)).

<sup>4</sup> See *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013).

<sup>5</sup> See *Extension of Time Limits*, 78 FR 57790 (September 20, 2013).

**Letters of Appearance and Administrative Protective Orders**

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (“APO”) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department’s regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

**Information Required From Interested Parties**

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice

<sup>1</sup> See also *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

<sup>2</sup> See section 782(b) of the Act.

<sup>3</sup> See *Certification of Factual Information To Import Administration During Antidumping and*

of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.<sup>6</sup>

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 28, 2016.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2016-18297 Filed 7-29-16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Pacific Coast Groundfish Fishery Rationalization Social Study.  
*OMB Control Number:* 0648-0606.

*Form Number(s):* None.

*Type of Request:* Regular (request for extension of a currently approved information collection).

*Number of Respondents:* 460.

*Average Hours per Response:* 30 minutes.

*Burden Hours:* 143.

*Needs and Uses:* This request is for revision and extension of a currently approved information collection. The revision consists of minor changes to the information collection tool.

Historically, changes in fisheries management regulations have been shown to result in impacts to individuals within the fishery. An understanding of social impacts in fisheries—achieved through the collection of data on fishing communities, as well as on individuals who fish—is a requirement under several federal laws. Laws such as the National Environmental Protection Act and the Magnuson Stevens Fishery Conservation Act (as amended 2007) describe such requirements. The collection of this data not only helps to inform legal requirements for the existing management actions, but will inform future management actions requiring equivalent information.

Literature indicates fisheries rationalization programs have an impact on those individuals participating in the affected fishery. The Pacific Fisheries Management Council implemented a rationalization program for the Pacific Coast Groundfish limited entry trawl fishery in January 2011. This research aims to continue to study the individuals in the affected fishery over the long term. Data collection will shift from a timing related to changes in the catch share program design elements to a five-year cycle. In addition, the study will compare results to previous data collection efforts in 2010, 2012, and 2015/2016. The data collected will provide updated and more comprehensive descriptions of the industry as well as allow for analysis of changes the rationalization program may create in the fishery. The measurement of these changes will lead to a greater understanding of the social impacts the management measure may have on the individuals in the fishery. To achieve these goals, it is critical to continue data collection for comparison to previously collected data and establish a time-series which will identify changes over the long term. Analysis can also be correlated with any regulatory adjustments due to the upcoming five-year review of the program. This study will continue data collection efforts to achieve the stated objectives.

*Affected Public:* Business or other for-profit organizations; not-for-profit institutions; individuals or households.

*Frequency:* Intermittently (every 2–3 years).

*Respondent's Obligation:* Voluntary.

This information collection request may be viewed at [reginfo.gov](http://reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-5806.

Dated: July 26, 2016.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2016-18076 Filed 7-29-16; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 150122069-6596-02]

**RIN 0648-XD740**

#### Endangered and Threatened Wildlife and Plants; Notice of 12-Month Finding on Petitions To List Porbeagle Shark as Threatened or Endangered Under the Endangered Species Act (ESA)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; 12-month finding and availability of status review document.

**SUMMARY:** We, the National Marine Fisheries Service, have completed a comprehensive status review under the Endangered Species Act (ESA) for porbeagle shark (*Lamna nasus*) in response to petitions to list this species. Based on the best scientific and commercial information available, including the status review report (Curtis *et al.*, 2016), and taking into account ongoing efforts to protect these species, we have determined that porbeagle sharks do not warrant listing at this time. This review identified two Distinct Population Segments (DPS)—North Atlantic and Southern Hemisphere—of porbeagle sharks. We conclude that neither is currently in danger of extinction throughout all or a significant portion of its range or likely to become so in the foreseeable future. We also conclude that the species itself is not currently in danger of extinction throughout all or a significant portion of

<sup>6</sup> See 19 CFR 351.218(d)(1)(iii).

its range or likely to become so in the foreseeable future.

**DATES:** This finding was made on August 1, 2016.

**ADDRESSES:** The status review document for porbeagle sharks is available electronically at: <http://www.nmfs.noaa.gov/pr/species/notwarranted.htm>. You may also receive a copy by submitting a request to the Protected Resources Division, NMFS GARFO, 55 Great Republic Drive, Gloucester, MA 01930, Attention: Porbeagle Shark 12-month Finding.

**FOR FURTHER INFORMATION CONTACT:** Julie Crocker, NMFS Greater Atlantic Regional Fisheries Office, 978–282–8480 or Marta Nammack, NMFS Office of Protected Resources, 301–427–8469.

**SUPPLEMENTARY INFORMATION:**

**Background**

We, the National Marine Fisheries Service (NMFS), received a petition, dated January 20, 2010, from Wild Earth Guardians (WEG) requesting that we list porbeagle sharks throughout their entire range, or as Northwest Atlantic, Northeast Atlantic, and Mediterranean DPSs under the ESA. WEG also requested that we designate critical habitat for the species. We also received a petition, dated January 21, 2010, from the Humane Society of the United States (HSUS) requesting we list a Northwest Atlantic DPS of porbeagle shark as endangered. In response to these petitions, we published a “negative” 90-day finding on July 12, 2010, in which we concluded that the petitions did not present substantial scientific and commercial information indicating that listing under the ESA may be warranted.

In August 2011, the petitioners filed complaints in the U.S. District Court for the District of Columbia challenging our denial of the petitions. On November 14, 2014, the court published a Memorandum Opinion granting the plaintiffs’ requests for summary judgment in part, denying our request for summary judgment, and vacating the 2010 90-day finding for porbeagle sharks. The court ordered us to prepare a new 90-day finding. The court entered final judgment on December 12, 2014 (remand). The new 90-day finding, which published on March 27, 2015 (80 FR 16356), was based primarily on information that had become available since 2010, including a new Canadian assessment of the Northwest Atlantic stock and new information in recent proceedings from the International Convention for the Conservation of Atlantic Tunas (ICCAT), regulatory documents, published literature, and **Federal Register** notices as well as the

information contained in the original petitions. We accepted the 2010 petitions and initiated a review of the status of the species consistent with the ESA mandate that listing determinations should be made on the basis of the best scientific and commercial information available. Under the ESA, if a petition is found to present substantial scientific or commercial information that the petitioned action may be warranted, a status review shall be promptly commenced (16 U.S.C. 1533(b)(3)(A)).

As described in the 90-day finding (80 FR 16356, March 27, 2015), new assessments, management actions, and other information became available subsequent to the 2010 90-day finding. This information indicated that the petitioned actions may be warranted and a review of the status of the species was initiated. The standard for making a positive 90-day finding (*e.g.*, that a petitioned action “may be warranted”) is low, and if there is information that can be interpreted in more than one way, then a status review may be conducted in order to delve into the available information more thoroughly. We performed that more detailed review and determined that the best available scientific and commercial information taken together does not support a listing. This included an in-depth review of the available literature, including the new assessments described in the 90-day finding and additional reports on porbeagle sharks in the Southern Hemisphere. This review informed an Extinction Risk Assessment (ERA), which was conducted by a team with expertise in shark biology and ecology, stock assessment, population dynamics, and highly migratory species management. The status review and the ERA were independently peer reviewed by external experts, and other published and unpublished information was used to make this 12-month determination.

**Listing Species Under the Endangered Species Act**

We are responsible for determining whether the porbeagle shark is threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a “species” under Section 3 of the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines species to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” A DPS is a vertebrate

population or group of populations that is discrete from other populations in the species and significant in relation to the entire species. On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a DPS of a taxonomic species (61 FR 4722). Under the joint DPS policy, we consider the following when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

Section 3 of the ESA further defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range” and a threatened species as one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” Thus, we interpret an “endangered species” to be one that is presently in danger of extinction. A “threatened species,” on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened). Section 4 of the ESA also requires us to determine whether any species is endangered or threatened as a result of any of the following five factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence 16 U.S.C. 1533(a)(1)(A)–(E)). Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made by any state or foreign nation or political subdivision thereof to protect the species. In evaluating the efficacy of existing domestic protective efforts, we rely on the Services’ joint *Policy on Evaluation of Conservation Efforts When Making Listing Decisions* (“PECE”; 68 FR 15100; March 28, 2003) for any conservation efforts that have not been implemented

or have been implemented but not yet demonstrated effectiveness.

### Status Review

The status review report for porbeagle sharks is composed of two components: (1) A scientific literature review and analysis of the five ESA Section 4(a)(1) factors and (2) an assessment of the extinction risk. A biologist in NMFS' Greater Atlantic Region's Sustainable Fisheries Division with expertise in shark ecology was appointed to complete the first component, undertaking a scientific review of the life history and ecology, distribution and abundance, and an analysis of the ESA Section 4(a)(1) factors. An Extinction Risk Analysis (ERA) team was convened to conduct the extinction risk analysis using the information in the scientific review as a basis. The ERA team was comprised of a fishery management specialist from NMFS' Highly Migratory Species Management Division, two research fishery biologists from NMFS' Northeast and Southeast Fisheries Science Centers, and the Sustainable Fisheries Division biologist who did the scientific literature review and analysis of Section 4(a)(1) factors. The ERA team had group expertise in shark biology and ecology, population dynamics, highly migratory species management, and stock assessment science. The ERA team also reviewed the information in the scientific literature review. The status review report for porbeagle sharks (Curtis *et al.*, 2016) compiles the best available information on the status of the species as required by the ESA, provides an evaluation of the discreteness and significance of populations in terms of the DPS policy, and assesses the current and future extinction risk, focusing primarily on threats related to the five statutory factors set forth above. This report presents the ERA team's professional judgment of the extinction risk facing porbeagle sharks but makes no recommendation as to the listing status of the species. The status review report is available electronically at the Web site listed above.

The status review report was subjected to independent peer review as required by the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M-05-03; December 16, 2004). The status review report was peer reviewed by four independent specialists selected from government, academic, and scientific communities, with expertise in shark biology, conservation and management, and specific knowledge of porbeagle sharks. The peer reviewers were asked to evaluate the adequacy, quality, and

completeness of the data considered and whether uncertainties in these data were identified and characterized in the status review as well as to evaluate the findings made in the "Assessment of Extinction Risk" section of the report. They were also asked to specifically identify any information missing or lacking justification, or whether information was applied incorrectly in reaching conclusions. All peer reviewer comments were addressed prior to finalizing the status review report. Comments received are posted online.

We subsequently reviewed the status review report, cited references, and peer review comments, and concluded that the status review report, upon which this listing determination is based, provides the best available scientific and commercial information on porbeagle sharks. Much of the information discussed below on porbeagle shark biology, genetic diversity, distribution, abundance, threats, and extinction risk is attributable to the status review report. However, we have independently applied the statutory provisions of the ESA, including evaluation of the factors set forth in Section 4(a)(1)(A)–(E); our regulations regarding listing determinations; and, our DPS and Significant Portion of its Range (SPR) policies in making the listing determination.

### Taxonomy

Porbeagle sharks belong to the family Lamnidae, genus *Lamna*, and species *nasus*. The petitioned subject is a valid species as defined under the ESA.

### Distribution and Habitat Use

Porbeagle sharks are found in both the Northern and Southern Hemispheres. They are commonly found in waters over the continental shelf, shelf edges, and in open ocean waters. In the Northern Hemisphere, they are found in the North Atlantic Ocean in pelagic and coastal waters in and adjacent to the Northeast coast of the United States, Newfoundland Banks, Iceland, Barents, Baltic, and North Seas, the coast of Western Europe down to the Northwest African coast, and the Mediterranean Sea. They are absent from waters of the North Pacific. In the Southern Hemisphere, they are distributed in a continuous band around the globe in temperate waters of the Southern Atlantic, Southern Indian, and Southern Pacific Oceans. Like other lamnid sharks, the porbeagle shark is endothermic (warm-blooded). There is no evidence suggesting that the range of the species has contracted.

It prefers cold, temperate waters and does not occur in equatorial waters. Generally, porbeagle sharks prefer waters less than 18 °C (64 °F) but have been documented in waters ranging from 1–26 °C (34–79 °F) (Compagno, 2002; Francis *et al.*, 2008; Skomal *et al.*, 2009). Porbeagle sharks are highly mobile and capable of making long-distance migrations, though individuals often remain within a smaller range.

The porbeagle shark is found from surface and inshore waters (less than 1 m (3 ft)) to deep (>1,000 m (>3,281 ft)) depths, with variations in depth distribution depending on the season and region (Compagno 2001; Pade *et al.*, 2009; Saunders *et al.*, 2009; Skomal *et al.*, 2009; Campana *et al.*, 2010a; Francis *et al.*, 2015). In the Northwest Atlantic, tagged sharks moved from the surface to 1300 m (4265 ft) with no difference in depths used during the day or night. Seasonal differences in depth distribution were observed (Campana *et al.*, 2010a). Mature female sharks tagged in the Northwest Atlantic moved to the Sargasso Sea, suggesting a pupping area (Campana *et al.*, 2010a). Two relatively small tagging studies were conducted in the Northeast Atlantic. In these studies, porbeagle sharks ranged from the surface to 500–700 m (1640–2297 ft) depth, and differences in vertical distribution during day and night were observed (Pade *et al.*, 2009; Saunders *et al.*, 2009). In a study in the Southern Hemisphere, Francis *et al.* (2015) evaluated the vertical movements of 10 porbeagle sharks. All of the sharks in the study dived to depths of at least 600 m (1969 ft), with a maximum recorded depth of 1024 m (3360 ft) and vertical movements were observed.

The porbeagle shark is a habitat generalist and not substantially dependent on any particular habitat type. Its use of habitat is influenced by temperature and prey distribution, but the shark has broad temperature tolerances and an opportunistic diet (Curtis *et al.*, 2016). The porbeagle shark is an opportunistic feeder, taking advantage of available prey (Joyce *et al.*, 2002; Campana and Joyce 2004). The diet is characterized by a diverse range of pelagic, epipelagic, and benthic species, depending on what is available (Joyce *et al.*, 2002). Prey species include teleosts (a large and diverse group of bony fish), including lancetfish, flounders, lumpfish, and Atlantic cod, and cephalopods, including squid (Joyce *et al.*, 2002). In the Gulf of Maine, porbeagle sharks predominately feed on mackerel, herring, and other small fishes, other species of sharks, and squids (Collette and Klein-MacPhee, 2002).

### Life History

The porbeagle shark is an aplacental, viviparous species with oophagy. This means embryos develop inside eggs that are retained in the mother's body until the young are born live. There is no placental connection, and the eggs are consumed in utero during gestation and development (Jensen *et al.*, 2002). Size at birth is approximately 58–67 cm (22.8–26.4 inches) (Francis *et al.*, 2008; Forselledo, 2012). Porbeagle sharks have low productivity, an 8–9 month gestation period (Jensen *et al.*, 2002; Francis *et al.*, 2008), and an average litter size of four pups (Jensen *et al.*, 2002; Francis *et al.*, 2008). Ages of sexual maturity are approximately 8 years for males and 13 years for females in the Northwest Atlantic (Jensen *et al.*, 2002; Natanson *et al.*, 2002; CITES, 2013) and 8–11 years for males and 15–18 years for females in New Zealand (Francis *et al.*, 2008; CITES, 2013). The maximum age of porbeagle sharks is estimated at 46 years in an unfished population, but may exceed 65 years in the Southern Hemisphere (Natanson *et al.*, 2002; ICCAT, 2009; CITES, 2013).

In a comparison of life history characteristics of 38 shark species, the population growth rate of porbeagle sharks in the Northwest Atlantic was in the lower-third of the species examined. The reported population growth rate was 1.022 (values less than 1 indicate negative population growth rates) with a mean generation time of approximately 18 years (Cortes, 2002). Juvenile survival rates were among the highest of the shark species analyzed, resulting in high overall natural survival rates (84–90 percent). A recent assessment (Cortes *et al.*, 2015) conducted by ICCAT found that the population growth rate for porbeagle sharks in the Atlantic ranked 13th highest out of 20 stocks and the generation time was on the order of 20 years. The generation time in the Southern Hemisphere is longer due to slower growth rates and greater estimated longevity. In sum, porbeagle sharks are a slow maturing, relatively long lived species with a relatively low population growth rate.

### Population Structure

Stocks are often used to define populations for fisheries management purposes. These stock management units are not equivalent to DPSs unless they also meet the criteria for identifying a DPS. As described in the report for the 2009 porbeagle stock assessment meeting (International Council for the Exploration of the Sea (ICES)/ICCAT, 2009), four stocks have

been identified in the Atlantic Ocean. These include two in the Northern Hemisphere—the Northwest and Northeast Atlantic stocks—and two in the Southern Hemisphere—the Southwest and Southeast Atlantic stocks. There may also be an Indo-Pacific stock in the Southern Hemisphere, but the stock boundaries remain unclear. The Northwest Atlantic stock includes porbeagle sharks from the waters on and adjacent to the continental shelf of North America, and the Northeast stock includes porbeagle sharks from the waters in and adjacent to the Barents Sea south to Northwest Africa, including the Mediterranean Sea. In defining stocks, a range of information is considered, including fisheries, biological, distribution, genetic, and tagging information. While these stocks do not necessarily equate to DPSs, they are useful delineations for discussing the population abundance and trends as this is how data for this species are frequently collected and reported.

Tagging and genetic data help define stock structure. Tagging studies may use conventional or electronic tags to collect data on an animal's movements. Conventional tags have a unique number and contact information printed on them. When an animal with a tag is captured, scientists can use the tag number to identify the location and date of release as well as any other information recorded when the animal was tagged. This information, along with information recorded when the animal is recaptured, can be used to identify information such as how long the shark was at large, distance between release and recapture locations, and how much the animal grew during that time. There are several limitations to interpreting conventional tagging data. First, it relies on recapturing the animal and reporting that capture to researchers. In studies of porbeagle sharks, the recapture and reporting rate is approximately 10 percent of tags deployed (Kohler *et al.*, 2002; Curtis *et al.*, 2016), meaning that for every 100 porbeagle sharks tagged, only 10 are recaptured and reported back to researchers. Second, with a conventional tag the researcher only knows the location where the animal was tagged and released and where it was recaptured. The animal's movement between these two locations is unknown. For example, if an animal was tagged/released and later recaptured within a few kilometers, we would not know if the animal had stayed in that small area for the entire time or if it had traveled thousands of

kilometers and returned back to the area. Other tags such as pop-up satellite archival tags (*e.g.*, PSATs) are attached to the animal and store information including location, light level, depth, and temperature throughout the tag's deployment period (typically up to 1 year). The tag then detaches from the animal, floats to the ocean surface, and transmits all of the stored data to a satellite; those data are used to reconstruct the movements of the animal during deployment. This provides more insight into the animal's movements as it collects data on a more continuous (daily) basis. These satellite tags allow for collection of movement information even if the animal is not recaptured.

Tagging data indicate that porbeagle shark movements across the North Atlantic are limited (that is, a limited number of porbeagle sharks move across the Atlantic), but do occur (ICES/ICCAT, 2009). One porbeagle shark tagged in the Northeast Atlantic was recaptured off Newfoundland, Canada; this means that trans-Atlantic movements occur at least occasionally (ICES, 2007). The greatest distance documented between conventional tag release and recapture location is 4,260 km. The time between tagged/released and recapture has been as long as 16.8 years (N. Kohler, NMFS, unpublished data as reported in Curtis *et al.*, 2016).

Several recent studies have used PSATs to track porbeagle sharks in the Northwest and Northeast Atlantic and the Southwest Pacific (Pade *et al.*, 2008; ICCAT, 2009; Skomal *et al.*, 2009; Campana *et al.*, 2010a; Saunders *et al.*, 2011; Bendall *et al.*, 2013; Francis *et al.*, 2015). The maximum displacement by a porbeagle recorded with a satellite tag (4,400 km) was similar to that documented with conventional tags. However, most animals showed relatively restricted movements and fidelity to the site where they were tagged, at least within the tracking duration (<1 year). This means that while some porbeagle sharks make long distance migrations, most animals did not. While the data are limited, a few animals have traveled great distances showing the biological potential for the species to move between areas. Individuals often remain within the range of a particular stock, but these data indicate that porbeagle sharks do occasionally move between stock areas.

Mature female porbeagle sharks appear to make the largest movements in the Northwest Atlantic. Several sharks tagged off Canada swam southward to the subtropical Sargasso Sea and northern Caribbean region, presumably to pup (Campana *et al.*,



2010a). Males and immature sharks have also made significant movements (Saunders *et al.*, 2011; Francis *et al.*, 2015; J. Sulikowski (unpublished data) as cited in Curtis *et al.*, 2016). Saunders *et al.* (2011) report that a small male migrated greater than 2,400 km. In a study in the Southern Hemisphere, porbeagle sharks made movements of hundreds to thousands of kilometers. In this study, an immature male shark had the maximum estimated track length (Francis *et al.*, 2015).

Genetic data can also help define population structure. Though the available data from tags indicate little exchange between the Northwest and Northeast Atlantic stocks (likely due to the low overall sample size), genetic analysis shows these stocks mix (Pade *et al.*, 2006; Testerman *et al.*, 2007; ICES/ICCAT, 2009; Kitamura and Matsunaga, 2010). Mitochondrial DNA (mtDNA) studies indicate that there is no differentiation between the stocks within the North Atlantic (Pade *et al.*, 2006; Testerman *et al.*, 2007). These studies documented that dominant haplotypes were present in samples from both sides of the Atlantic, indicating that there is gene flow that is not being identified clearly through the tagging studies. Kitamura and Matsunaga (2010) also found no indication of multiple populations in the North Atlantic based on genetic studies. Similarly, genetic studies in the Southern Hemisphere indicate that porbeagle sharks in that region are not significantly differentiated (Testerman *et al.*, 2007; Kitamura and Matsunaga, 2010). Genetic analyses also suggest no separation between the southeastern Indian Ocean and the southwestern Indian Ocean, indicating that the distribution across the Indian Ocean is continuous (Semba *et al.*, 2013).

There are several genetic studies that show marked differences between the Northern and Southern Hemispheres, supporting the conclusions that these populations do not mix (Pade *et al.*, 2006; Testerman *et al.*, 2007; ICES/ICCAT, 2009; Kitamura and Matsunaga, 2010). It is likely that the porbeagle shark's preference for colder temperatures limits movement between the hemispheres (Curtis *et al.*, 2016). If populations are markedly separated and adapted to the environment, the differences that occur are shown as they begin to diverge genetically. Within the North Atlantic, the data show that they are not genetically distinct, that mixing is occurring, and that they are not markedly separated. Similarly, the studies within the Southern Hemisphere also indicate that these populations are not genetically distinct. However, the

populations in the Northern Hemisphere are markedly separated from those in the Southern Hemisphere.

#### Abundance and Trends

As described above, porbeagle sharks are managed for fisheries purposes by stock unit. Therefore, much of the data on the abundance of populations is by stock. In the North Atlantic, porbeagle sharks have declined from 1960s population levels due to overharvesting. However, the populations are currently stable or increasing and are on a trajectory to recovery (Curtis *et al.*, 2016), meaning that the population in the North Atlantic is growing. The North Atlantic stocks of porbeagle sharks are considered overfished. In overfished stocks, the biomass is well below the biomass at maximum sustainable yield ( $B_{MSY}$ ), which is the abundance level that can support the largest, long-term average catch that can be taken under existing conditions, and is considered the biomass target for fisheries management. Generally, a stock is first considered overfished once estimates of biomass are lower than a specific target level. For many fish species that target level is one-half  $B_{MSY}$ . However, generally for sharks, because their natural mortality is so low, the target level can be greater than one-half  $B_{MSY}$  (e.g., 0.75  $B_{MSY}$ ). In other words, the specific target at which we would consider a shark species to be overfished is species-specific and depends on that species' level of natural mortality. Once declared overfished, a species continues to be considered overfished until biomass returns to a different target level. Generally, that level is  $B_{MSY}$ .

While porbeagle sharks in the North Atlantic are overfished, overfishing is not occurring. (SCRS, 2014; Curtis *et al.*, 2016). Overfishing is a level or rate of fishing mortality that jeopardizes the long-term capacity of the stock to produce MSY on a continuing basis. As explained above, being overfished does not necessarily mean that the population is not growing, it is not an indication of population trajectory—it just means that biomass is below a target level. An overfished stock can be rebuilding and on a trajectory to recovery. Overfishing will slow the rate of biomass growth and, if it continues, can reverse replenishment and the population will decrease. With respect to extinction risk, an overfished marine fish stock may be at greater risk than one that is not overfished, but being overfished does not automatically equate to a species having an especially high risk of extinction (Curtis *et al.*, 2016).

This means that while the North Atlantic stock sizes are smaller than threshold levels (because of fishing or other causes), the annual catch rate is at a level that is allowing rebuilding. There is also evidence to suggest that the populations in the Southern Hemisphere, while overfished, are stable or increasing (ICES/ICCAT, 2009; Pons and Domingo, 2010; Francis *et al.*, 2014; WCPFC, 2014).

**Northwest Atlantic**—The estimate of the stock of porbeagle sharks in the Northwest Atlantic in 1961 is considered to be at an unexploited or virgin level. Therefore, this estimate is used for comparison with more recent estimates. Several models have assessed porbeagle shark abundance, biomass, and trends in the Northwest Atlantic. Different types of models have been used, including forward-projecting age and sex structured models (DFO, 2005; Campana *et al.*, 2012) and a Bayesian Surplus Production (BSP) model (ICES/ICCAT, 2009). These independent models came to the same conclusions with respect to the stock size and trends (*i.e.*, stock size below target levels, but increasing).

For 2005, the stock was estimated to be between 188,000 to 195,000 (DFO, 2005) individuals, 12–24 percent of the 1961 estimates (Gibson and Campana, 2005). Campana *et al.* (2012) modeled the populations from the 1961 baseline and projected forward by adding recruitment to the population and removing catches. This assessment ran four different models using differing assumptions, a routine practice in fisheries stock assessment. This method estimated 196,111–206,956 porbeagle sharks in 2009 (Campana *et al.*, 2012), 22–27 percent of the 1961 estimates. The estimates for 2005 and 2009 can be directly compared because the same models and data sources were used in estimating the populations. The results indicate that the overall population is increasing; even when comparing the low ends of the estimates (188,000 porbeagle sharks in 2005 compared to 196,111 porbeagle sharks in 2009).

Campana *et al.* (2012) also estimated the number of mature females. The estimated number of mature females in 2009 ranged from 11,339 to 14,207 individuals. The estimates of mature females or spawning stock biomass are used as indicators of stock health. All four models indicated that the number of mature females in the Northwest Atlantic stock is increasing and that the 2009 estimates are higher than the 2005 levels (Campana *et al.*, 2012).

Furthermore, estimated total biomass (the weight of all porbeagle sharks collectively) is also increasing. In 2009,

total biomass was around 10,000 metric tons (mt), 20–24 percent of the 1961 estimate. The 2005 assessment did not assess the total biomass. However, Campana *et al.* (2012) did estimate total biomass in 2001. The 2009 biomass estimate is 4–22 percent higher than the biomass estimated from 2001 (Campana *et al.*, 2012; Campana *et al.*, 2010b). Population metrics are often expressed in biomass rather than the number of individuals, as catch data are reported in weight. An increase in biomass is generally indicative of an increase in number of individuals (Curtis *et al.*, 2016) and not just an increase in the weight of the same number of individuals. Significantly, all four model variations show mean increases in biomass since 2001, confirming the increasing biomass estimated in the stock assessment (ICES/ICCAT, 2009). This increase likely indicates increased recruitment to the adult stock and continued growth of individual fish in the stock (Curtis *et al.*, 2016).

Maximum likelihood estimation is a technical, computer-intensive statistical approach that allows a researcher to evaluate the parameters in a model to identify those with the greatest likelihood of having produced the observed (given) data. This statistical analysis produces a maximum likelihood value. By iteratively changing the parameters in the model until this value is found to be highest (maximum), the researcher can identify those parameters most likely to have produced the observed data.

Model runs with different parameters or parameter values will result in different maximum likelihood values. Therefore, this approach can be used to evaluate a series of models as to which model is the preferred model; that is, which model fits the data best. Models with higher maximum likelihood values are more likely than those with lower values to have produced the observed data. Therefore, models with higher maximum likelihood values may be preferred.

Using this approach, Campana *et al.* (2012) concluded that Model 1 was the most plausible model. Model 1 showed increases in the number of mature females in the overall populations since 2001, likely reflecting the positive effects of management (Campana *et al.*, 2012). Model 2 was the least plausible model. Therefore, it is not reasonable to rely on Model 2 to assess the population.

All model variations, except model 2, showed increases in the overall population since 2001. Model 2 suggested that there could have been slightly fewer fish in 2009 than 2001,

but, as noted above, based on the maximum likelihood method, the researchers identified this model variation as the “least plausible” variation and indicated that it is not likely an indicator of the true trend in the population (Campana *et al.*, 2010b; Campana *et al.*, 2012). Because of this, it is not reasonable to rely on Model 2. The overall agreement of all modeled population trends provides strong evidence of increasing abundance in this stock (Campana *et al.*, 2012).

Similarly, all four model variations show increases in female stock numbers and three of the four show increases in general populations from 2005–2009. Again, model 2 was the exception. This model estimated a slight decrease (approximately two percent or 4,000 fish) in the overall population from 2005 to 2009. As mentioned, this model was determined to be the “least plausible” (Campana *et al.*, 2012). Even if the more conservative model 2 (a lower productivity scenario) more closely reflected the reality of porbeagle stock size, the stock was still projected to increase under the current harvest levels (Campana *et al.*, 2012). Based on the four model runs and taking into account the most plausible scenarios as defined by the researchers, the reasonable conclusion is that biomass and the general population has increased since 2001 and will continue to increase in the future (Curtis *et al.*, 2016).

The models used by Campana *et al.* (2010, 2012) were forward projecting age- and sex-based models. These models projected the population forward in time from an equilibrium starting abundance (*i.e.*, the unfished population in 1961) and age distribution by adding recruitment and removing catches. The models assessed both the female population and total population.

In 2009, the ICES/ICCAT stock assessment working group ran a BSP model for the Northwest Atlantic stock, which was considered in addition to the forward projecting age- and sex-based model from Campana *et al.* (2010). The BSP model was used to confirm the trends from the results of Campana’s age-structured model. The Campana *et al.* (2010) model and the BSP model are based on different assumptions as to how the data should be interpreted and weighted and, therefore, result in differing estimates. The BSP model used catch per unit effort (CPUE) to estimate biomass and weighted the CPUE data using two approaches resulting in two variations of the model. CPUE data in the catch-weighted model were weighted by relative proportion of the catch corresponding to each CPUE

series in each year (catch-weighted model; meaning that annual data with more catch had a greater influence on the model output). The equal-weighted BSP considered eight CPUE series; six Canadian CPUE series, the U.S. series, and the Spanish series (limited to two areas). Each point in each data series was given equal weight (equal weighted model; meaning that the relative amount of catch in each annual point had no influence on the model output). Thus the Canadian series, which has the majority of the catch, was effectively given more weight than the United States or Spanish series. The catch-weighted BSP model estimated the biomass in 2005 to be 66 percent of the 1961 biomass. The equal weighted BSP model estimated the biomass in 2005 as 37 percent of the 1961 biomass. Both models resulted in estimates higher than the estimate of 10–24 percent from the Campana *et al.* (2010) age-structured model. Results of the BSP model applied to data through 2009 were similar to those of the age-structured model, providing further support that Model 2 (Campana *et al.*, 2012) is less reliable. Because the two independent models came to the same conclusions with respect to the stock size and trends (*i.e.*, stock size below target levels, but increasing), we have confidence in the determination that the stock has increased.

The ICES/ICCAT (2009) working group looked at all available models, data, and fits to the data. They determined that, in recent years, total biomass is increasing and fishing mortality is decreasing. This indicates that the Northwest Atlantic stock is recovering. These results are supported by more recent assessments (Campana *et al.*, 2010; Campana *et al.*, 2012; SCRS, 2014). In summary, recent biomass and abundance appears to be increasing under all available models. While the population is overfished, overfishing is not occurring.

**Northeast Atlantic**—This stock has the longest history of being targeted by commercial fishing. The highest catches occurred between the 1930s and 1950s (ICES/ICCAT, 2009). The lack of CPUE data during the peak of the fishery makes it difficult to estimate current status relative to biomass of an unfished stock. The ICCAT stock assessment working group ran various model scenarios to assess the Northeast Atlantic stock of porbeagle sharks. The working group found that the stock was overfished but that overfishing was not occurring and that current management was likely to prevent the stock from declining further and allow recovery (ICES/ICCAT, 2009). The working group

indicated that the stock would recover within 15–34 years (one to two generations) if there was no fishing mortality (ICES/ICCAT, 2009). Under the 2009 European Union (EU) total allowable catch (TAC) level, the stock was projected to increase slowly but not rebuild (*i.e.*, reach a target population size that supports maximum sustainable yield) within 50 years. The TAC is the amount of the species allowed to be harvested by all users, commercial and recreational, over a specified time. In 2010, the TAC was set at zero and has remained at zero; therefore, it is reasonable to assume that at the current fishing levels the stock will continue to increase and rebuild.

Porbeagle sharks from the Northeast Atlantic stock are also found in the Mediterranean Sea. The Mediterranean Sea is in the southeastern edge of the porbeagle shark's range in the North Atlantic, and the species has always been uncommon in the region (Storai *et al.*, 2005; CITES, 2013). There is no information suggesting that porbeagle sharks in the Mediterranean Sea are isolated genetically or spatially from the larger Northeast Atlantic stock. Given that porbeagle sharks are highly mobile and habitat generalists, the animals in the Mediterranean Sea are likely to mix with animals in adjacent regions. Ferretti *et al.* (2008) examined various historical data sources, some of which dated back to 1800s, from the Mediterranean Sea and estimated that lamnid sharks (including porbeagle and shortfin mako sharks) had declined significantly from historical levels. The researchers were unable to distinguish what portion of the decline is attributable to porbeagle sharks. Porbeagle sharks have had a low occurrence and catch rate in this region even at the earliest stages of the time series (Ferretti *et al.*, 2008). This research was based on small overall sample sizes and used methods that have been previously criticized as producing overly pessimistic population trends (Burgess *et al.*, 2005). Storai *et al.* (2005) were only able to document 33 verified records of porbeagle sharks around Italy from 1871–2004, confirming that these sharks have had a low historical occurrence. Other data sources also show low historical occurrence throughout the Mediterranean Sea (CITES, 2013). The ERA team concluded that porbeagle abundance has possibly declined in the Mediterranean Sea, but the species is historically uncommon in this region (Curtis *et al.*, 2016).

**Southern Hemisphere**—Data on porbeagle sharks in the Southern Hemisphere are sparse. This limits the

ability to provide a robust indication of the stock status and sustainable harvest levels. However, there is some information available. The 2009 ICES/ICCAT working group found that the available data, from the Uruguayan longline fleet operating between 1982 and 2008, indicate a long-term decline in CPUE in the Uruguayan fleet, meaning that fewer porbeagle sharks were being caught with the same amount of effort in 2008 compared to 1982. The data indicate that the CPUE has stabilized since 2000 (ICES/ICCAT, 2009). In a modeling effort, they concluded that biomass levels may be below  $B_{MSY}$  and that fishing mortality rates may be above those producing  $MSY$  (*i.e.*, overfishing may be occurring). Pons and Domingo (2010) also evaluated the CPUE using data from 1982–2008. They found declines in CPUE in the Uruguayan fleet during the 1990s, but that the trend has been stable or slightly increasing since 2000. In 2013, Uruguay prohibited retention of porbeagle sharks. The Standing Committee on Research and Statistics (SCRS, 2014) determined that the Southwest Atlantic stock was overfished but overfishing was probably not occurring. While data in the Southeast Atlantic was too limited to assess whether porbeagle stocks were overfished or if overfishing was occurring (ICES/ICCAT, 2009; SCRS, 2014), catch rate patterns suggest that this stock has stabilized since 2000 and is no longer declining (ICES/ICCAT, 2009; Pons and Domingo, 2010).

Semba *et al.* (2013) analyzed porbeagle sharks in the Southern Hemisphere using standardized CPUE data from the southern Bluefin Tuna longline fishery (1994–2011) and a driftnet survey (1982–1990). The study found no decreasing trend in abundance and concluded porbeagle sharks had a widely continuous distribution between the South Pacific and southeastern Indian Ocean and between the southwestern Indian Ocean and southeastern Atlantic Ocean. They also determined that juvenile abundance had not changed greatly during the period of 1982 to 2011. Due to a lack of fishing effort in the Indian Ocean, the study was unable to confirm presence in the central South Indian ocean but noted that genetic data indicate that the distribution is likely continuous through the Indian Ocean (Semba *et al.*, 2013).

There are no abundance trend data for porbeagle sharks in Australian waters. Historically, Japanese longline vessels operating in Australian waters caught porbeagle sharks, but these vessels have been excluded from these waters since

1997 and domestic Australian fishing effort is greatly reduced in areas where porbeagle sharks were caught (Bruce *et al.*, 2014). Porbeagle sharks are also caught incidentally in New Zealand's Southern Bluefin Tuna longline fishery. In New Zealand waters in recent years, stock status indices showed no sign of declining trends in abundance (Francis *et al.*, 2014; WCPFC, 2014). The CPUE indices were stable or increasing and the frequency of zero catches in the fishery declined, suggesting increases in relative abundance since 2005.

The level of diversity in genetic samples can also be an indicator of the population size. Mitochondrial DNA from samples in the North and South Atlantic show high diversity, indicative of a large population. Porbeagle sharks are the third most dominant species in the sub-Antarctic region of the South Pacific and are common throughout the Southern Hemisphere (Semba *et al.*, 2013).

In summary, stocks in the North Atlantic have stabilized and appear to be increasing. The Southwest Atlantic stock is considered overfished but overfishing is not occurring. Information on the Southeast Atlantic stock is too limited to determine the overfished/overfishing status, but it has been stable and not declining since the 1990s (ICES/ICCAT, 2009; SCRS, 2014). Populations in New Zealand also appear to be increasing (Francis *et al.*, 2014; WCPFC, 2014). Stocks in the Southern Hemisphere have stabilized and some may be increasing.

### Distinct Population Segment Analysis

As described above, the ESA's definition of "species" includes "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." The term "distinct population segment" is not recognized in the scientific literature and is not clarified in the ESA or its implementing regulations. Therefore, the Services adopted a joint policy for recognizing DPSs under the ESA (DPS Policy; 61 FR 4722) on February 7, 1996. Congress has instructed the Secretaries of Interior and Commerce to exercise this authority with regard to DPSs " \* \* \* sparingly and only when biological evidence indicates such an action is warranted." The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2)

the significance of the population segment to the species or subspecies to which it belongs.

A population segment of a vertebrate species may be discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon (an organism or group of organisms) as a result of physical, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA (e.g., inadequate regulatory mechanisms). If a population segment is found to be discrete under one or both of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or (4) evidence that the discrete population segment differs markedly from other population segments of the species in its genetic characteristics.

The petition from Wild Earth Guardians requested that we list porbeagle sharks throughout their entire range, or as Northwest Atlantic, Northeast Atlantic, and Mediterranean Distinct Populations Segments (DPS) under the ESA, and that we designate critical habitat for the species. The petition from the HSUS requested we list a Northwest Atlantic DPS of porbeagle shark as endangered.

In the Status Review, the ERA team considered the available information to assess whether there are any porbeagle population segments that satisfy the DPS criteria of both discreteness and significance. Rather than limit the analysis to only the potential DPSs identified by the petitioners, the ERA team considered whether any DPSs could be determined for porbeagle sharks. Data relevant to the discreteness question included physical, ecological, behavioral, tagging, and genetic data. As described above, porbeagle sharks occur in the North Atlantic and in a

continuous band around the Southern Hemisphere. They are absent from equatorial waters. Recent assessments have identified four stocks: The Northwest, Northeast, Southwest, and Southeast Atlantic stocks for fishery management purposes. An additional Indo-Pacific stock may also be present, but Southern Hemisphere stock boundaries are unclear (CITES, 2013).

The population in the North Atlantic is separated from the population in the Southern Hemisphere, as porbeagle sharks are absent from equatorial waters. It is likely that their preference for colder water temperatures limits movement between the Northern and Southern Hemispheres. The genetic data support that they do not move between these hemispheres, as genetic studies show marked differences between the populations in the North Atlantic and the Southern Hemisphere. This indicates that porbeagle sharks in the North Atlantic and porbeagle sharks in the Southern Hemisphere do not interbreed (Padre *et al.*, 2006; Testerman *et al.*, 2007; ICES/ICCAT, 2009; Kitamura and Matsunaga, 2010). Porbeagle sharks in the Southern Hemisphere are also biologically different. In the Southern Hemisphere, porbeagle sharks are smaller, slower growing, mature at a smaller size and greater age, and may be longer lived than those in the North Atlantic (Francis *et al.*, 2007, 2008, 2015). The ERA team concluded, and we concur, that the North Atlantic and Southern Hemisphere populations are discrete.

There is no information indicating that porbeagle sharks in the Mediterranean Sea, where they are historically rare, are isolated from the Northeast Atlantic stock. There are no direct genetic or tagging data on porbeagle sharks in the Mediterranean Sea, but numerous other highly migratory species (tunas, sharks) are known to move in and out of the Mediterranean Sea. Given that porbeagle sharks are widely distributed and highly migratory, it is reasonable to expect that porbeagle sharks in the Mediterranean Sea would mix with porbeagle sharks in other parts of the Northeast Atlantic. There is no information to indicate that porbeagle sharks in the Mediterranean Sea are a discrete population. As there is no evidence that the Mediterranean Sea population of porbeagle sharks is discrete, it was considered as part of the Northeast Atlantic stock for the remainder of the analysis.

Both tagging and genetic data can provide insight into whether a population is discrete. Conventional and satellite tagging data suggest limited, but occasional movements of

porbeagle sharks between the Northwest and Northeast Atlantic, as well as long distance movements into subtropical latitudes of the North Atlantic (Kohler *et al.*, 2002; Pade *et al.*, 2008; ICCAT, 2009; Skomal *et al.*, 2009; Campana *et al.*, 2010a; Saunders *et al.*, 2011; Bendall *et al.*, 2013). As described above, using conventional tagging data to inform our understanding of the animal's movements is limited by the frequency of recapture/return of tags and by the limited data returned. Though the tagging data offer little evidence of mixing between the Northwest and Northeast Atlantic, the genetic analyses show that these populations do mix. Mitochondrial DNA studies indicate that there is no differentiation among the stocks in the North Atlantic. The stocks are indistinguishable genetically, indicating that there is mixing and gene flow between them (Pade *et al.*, 2006; Testerman *et al.*, 2007). This level of mixing is occurring at a rate that has prevented the species from becoming genetically differentiated, meaning that there is enough interbreeding between porbeagle sharks in the Northwest and Northeast Atlantic that the populations are not significantly different genetically. Genetic homogeneity across broad regions can be achieved with extremely low mixing rates, even one percent per generation (Ward 2000). While the mixing rates between the Northwest and Northeast North Atlantic may be low, these populations mix sufficiently that there is a lack of genetic differentiation between the stocks. Curtis *et al.* (2016) hypothesize two pathways by which these movements may occur: (1) Active emigration or vagrancy of mature females from one subpopulation to a neighboring one or (2) a lack of philopatry in porbeagle pups born in subtropical waters (*i.e.*, not all porbeagle sharks return to their birthplace to breed). For example, pups born from Northwest Atlantic mothers may move into the Northeast Atlantic as they mature. More tagging and genetic studies are needed to determine the pathway and to better assess mixing rates (Curtis *et al.*, 2016); however, the current available evidence indicates that porbeagle sharks in the Northeast and Northwest Atlantic are not discrete.

In the North Atlantic, the porbeagle shark does cross international governmental boundaries. There are regulatory mechanisms in place across the species' range with respect to conserving and recovering porbeagle stocks. Similar regulatory mechanisms have been implemented on both sides of the Atlantic. These mechanisms include regulating directed catch and bycatch

and are described further below. Given the lack of genetic differentiation between the North Atlantic stocks and the lack of significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms across international borders, we have determined that the two stocks in the North Atlantic are not discrete from one another.

Tagging data in the Southern Hemisphere are very limited. Porbeagle sharks have a continuous distribution throughout the Southern Hemisphere (Semba *et al.*, 2013). As described above, Southwest and Southeast Atlantic stocks have been defined for management purposes, and there may also be an Indo-Pacific stock (including Australia, New Zealand, and the greater Southwest Pacific). Potential stock boundaries have been difficult to define and remain unclear (CITES, 2013). The available genetics data have not revealed any clear differentiation among samples throughout the region (Pade *et al.*, 2006; Testerman *et al.*, 2007; Kitamura and Matsunaga, 2010). Similar to the North Atlantic, porbeagle sharks in the Southern Hemisphere cross jurisdictional boundaries. As described below, regulatory measures restricting harvest are also in place across the range of this population. There is no information indicating that the populations in the Southern Hemisphere are discrete from one another. Therefore, there is no information to indicate there are separate DPSs in the Southern Hemisphere. Based on the best available information, the ERA team concluded that there are two discrete populations; one in the North Atlantic and the other in the Southern Hemisphere.

In accordance with the DPS policy, the ERA team also reviewed whether these two population segments identified in the discreteness analysis were significant. If a population segment is considered discrete, its biological and ecological significance relative to the species or subspecies must then be considered. We must consider available scientific evidence of the discrete segment's importance to the taxon to which it belongs. Data relevant to the significance question include morphological, ecological, behavioral, and genetic data, as described above. The ERA team found that the loss of either population segment would result in a significant gap in the range of the taxon and, therefore, both were significant. We considered the information presented in the status review and the following factors,

identified in the DPS policy, which can inform the significance determination: (a) Persistence of the discrete segment in an ecological setting unusual or unique for the taxon; (b) evidence that loss of the discrete segment would result in a significant gap in the range of the taxon; (c) evidence that the discrete segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (d) evidence that the discrete segment differs markedly from other populations of the species in its genetic characteristics. A discrete population segment needs to satisfy only one of these criteria to be considered significant.

The range of each discrete population (*i.e.*, the North Atlantic and Southern Hemisphere populations) represents a large portion of the species' range, as well as a unique ecosystem that has influenced the population. The North Atlantic and Southern Hemisphere ecosystems are unique with different physical (*e.g.*, currents), chemical (*e.g.*, salinity), and biological (*e.g.*, species size, longevity) properties. Each population is in a separate hemisphere, and the loss of either segment would result in a significant gap in the range of the species. That is, if the North Atlantic population were extirpated, the only porbeagle sharks would be in the Southern Hemisphere. As porbeagle sharks do not move between hemispheres and equatorial waters are too warm to support the species, it is not reasonable to expect that porbeagle sharks would move from the Southern Hemisphere into the North Atlantic, and the result would be a significant gap in the range of the species. In evaluating the factors above, factors a and b indicate that the two discrete population segments are significant. Therefore, we concur with the ERA team that the two discrete population segments are also significant. As such, we are identifying two DPSs of porbeagle shark. The extinction risk to the North Atlantic and Southern Hemisphere DPSs was evaluated separately for each DPS.

#### Assessment of Extinction Risk

The ESA (Section 3) defines endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range." A threatened species is "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Neither we nor the USFWS have developed any formal policy guidance about how to

further define the thresholds for when a species is endangered or threatened. We consider the best available information and apply professional judgment in evaluating the level of risk faced by a species in deciding whether the species is currently in danger of extinction throughout all or in a significant portion of its range (endangered) or likely to become so in the foreseeable future (threatened). We evaluate both demographic risks, such as low abundance and productivity, and threats to the species, including those related to the factors specified by the ESA Section 4(a)(1)(A)–(E).

#### Methods

As described above, we convened an ERA team to evaluate extinction risk to the species. This section discusses the methods used to evaluate demographic factors, threats, and overall extinction risk to the species now and in the foreseeable future. For this assessment, the term "foreseeable future" was defined as two generation times (40 years), consistent with other recent assessments for shark species. A generation time is defined as the time it takes, on average, for a sexually mature female porbeagle shark to be replaced by offspring with the same spawning capacity. As a late-maturing species, with slow growth rate and relatively low productivity, it would likely take more than a generation time for conservative management actions to be realized and reflected in population abundance indices. The ERA team reviewed other comparable assessments (which used generation times of either one or two generations) and discussed the appropriate timeframe for porbeagle sharks. The ERA team determined that, for porbeagle sharks, there was reasonable confidence across this time period (40 years) that the information on threats and management is accurate.

Often the ability to measure or document risk factors is limited, and information is not quantitative or very often lacking altogether. Therefore, in assessing risk, it is important to include both qualitative and quantitative information. In previous NMFS' status reviews, Biological Review Teams have used a risk matrix method, described in detail by Wainwright and Kope (1999), to organize and summarize the professional judgement of a panel of knowledgeable scientists. The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our status reviews (see <http://www.nmfs.noaa.gov/pr/species> for links to these reviews). In this approach, the collective condition of individual

populations is considered at the species level according to four demographic viability factors: Abundance, growth rate/productivity, spatial structure/connectivity, and diversity.

Connectivity refers to rates of exchange among populations of organisms. These viability factors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk.

Using these concepts, the ERA team evaluated demographic risks by individually assigning a risk score to each of the four demographic criteria (abundance, growth rate/productivity, spatial structure/connectivity, diversity). The scoring for the demographic risk criteria correspond to the following values: 1—very low, 2—low, 3—medium, 4—high, and 5—very high. A demographic factor was ranked very low if it is very unlikely the factor contributes or will contribute significantly to the risk of extinction. A factor was ranked low if it is unlikely it contributes or will contribute significantly to the risk of extinction. A factor was ranked medium if it is likely it contributes to or will contribute significantly to the risk of extinction. A factor was ranked high if it is highly likely that it contributes or will contribute significantly to the risk of extinction, and a factor was ranked very high if it is very highly (extremely) likely that the factor contributes or will contribute significantly to the risk of extinction.

Each team member scored each demographic factor individually. Each team member identified other demographic factors and/or threats that would work in combination with factors ranked in the higher categories to increase risk to the species. After scores were provided, the team discussed the range of perspectives and the supporting data for these perspectives. Team members were given the opportunity to adjust the scores, if desired, after discussion. The scores were then tallied, reviewed, and considered in the overall risk determination. As noted above, this scoring was carried out for each of the two identified DPSs.

The ERA team also performed a threats assessment for the porbeagle shark by evaluating the impact that a particular threat was currently having on the extinction risk of the species. Threats considered included habitat destruction, modification, or curtailment; overutilization; disease or predation; inadequacy of existing regulatory mechanisms; and other natural or manmade threats, because these are the five factors identified in

Section 4(a)(1) of the ESA. The scoring for the threats correspond to the following values: 1—very low, 2—low, 3—medium, 4—high, and 5—very high. A threat was given a rank of very low if it is very unlikely that the particular threat contributes or will contribute to the decline of the species. That is, it is very unlikely that the threat will have population-level impacts that reduce the viability of the species. A threat was ranked as low if it was unlikely the threat contributes or will contribute to the decline of the species. A threat was ranked as medium if it was likely that it contributes or will contribute to the decline of the species and high if it highly likely that it contributes or will contribute to the decline of the species. A threat was given a rank of very high if it was very highly (extremely) likely that the particular threat contributes or will contribute to the decline of the species. Detailed definitions of the risk scores can be found in the status review report. Similar to the demographic parameters, the ERA team was asked to identify other threat(s) and/or demographic factor(s) that may interact to increase the species extinction risk. The ERA team also considered the ranking with respect to the interactions with other factors and threats. For example, team members identified that threats due to the inadequacy of existing regulatory mechanisms may interact with the threat of overutilization and slow population growth rates (a demographic factor) to increase the risk extinction. When potential interactions such as these were identified, the team then evaluated those interactions (in this case interactions between the regulatory mechanisms, overutilization, and growth rates) to determine whether they would significantly change the ranking of the threat (in this case inadequacy of regulatory mechanisms). Team members again discussed their rankings and the supporting data and were given a chance to revise scores based on the discussion. These scores were considered with the demographic scores in the overall risk assessment.

The ERA team members were then asked to use their informed professional judgment to make an overall extinction risk determination for the porbeagle shark. The results of the demographic risks analysis and threats assessment, described below, informed this ranking. For this analysis, the ERA team defined four levels of extinction risk: Not at risk, low risk, moderate risk, and high risk. A species is at high risk of extinction when it is at or near a level of abundance, spatial structure and connectivity, and/or diversity and

resilience that place its persistence in question. Demographic risk may be strongly influenced by stochastic (random events or processes that may affect the population) or compensatory (resulting from a depressed breeding population) processes. Similarly, a species may be at high risk of extinction if it faces clear and present threats (*e.g.*, confinement to a small geographic area, imminent destruction, modification, or curtailment of habitat; or disease epidemic) that are likely to create imminent demographic risks (*e.g.*, low abundance, genetic diversity, resilience). A species is at moderate risk of extinction due to projected threats and its likely response to those threats (*i.e.*, declining trends in abundance/population growth, spatial structure and connectivity, and/or diversity and resilience) if it exhibits a trajectory indicating that it is more likely not to be at a high level of extinction. A species is at low risk of extinction due to projected threats and its likely response to those threats (*i.e.*, stable or increasing trends in abundance/population growth, spatial structure and connectivity, and/or diversity and resilience) if it exhibits a trajectory indicating it is not at moderate level of extinction risk. Lastly, a species is not at risk of extinction due to projected threats and its response to those threats (*i.e.*, long-term stability, increasing trends in abundance/population growth, spatial structure and connectivity, and/or diversity and resilience) if it exhibits a trajectory indicating that it is not at a low risk of extinction.

The ERA team adopted the “likelihood point” method for ranking the overall risk of extinction to allow individual team members to express uncertainty. For this approach, each team member distributed 10 ‘likelihood points’ among the extinction risk categories (that is, each team member had 10 points to distribute among the four extinction risk categories). Uncertainty is expressed by assigning points to different risk categories. For example, a team member would assign all 10 points to the ‘not at risk’ category if he/she was certain that the definition for ‘not at risk’ was met. However, he/she might assign a small number of points to the ‘low risk’ category and the majority to the ‘not at risk’ category if there was a low level of uncertainty regarding the risk level. The more points assigned to one particular category, the higher the level of certainty. This approach has been used in previous NMFS status reviews (*e.g.*, Pacific salmon, Southern Resident killer whale, Puget Sound rockfish, Pacific herring,

black abalone, and common thresher shark) to structure the team's thinking and express levels of uncertainty when assigning risk categories. Although this process helps to integrate and summarize a large amount of diverse information, there is no simple way to translate the risk matrix scores directly into a determination of overall extinction risk. The team scores were tallied (mode, median, range), discussed, and summarized for each DPS.

The ERA team did not make recommendations as to whether the species should be listed as threatened or endangered. Rather, the ERA team drew scientific conclusions about the overall risk of extinction faced by the North Atlantic and Southern Hemisphere populations of porbeagle shark under present conditions and in the foreseeable future (as noted above, defined as two generation times or 40 years) based on an evaluation of the species' demographic risks and assessment of threats.

#### Evaluation of Demographic Risks

**Abundance:** The ERA team evaluated the available information on population abundance and trends. They concluded that a ranking of low was warranted for both DPSs, as this factor is unlikely to contribute significantly to the porbeagle shark's risk of extinction. Kitamura and Matsunaga (2010) analyzed mtDNA from sharks in the North and South Atlantic. The research found high genetic diversity, indicative of a large population. Campana *et al.* (2012) reports that the large population size of the porbeagle shark in the Northwest Atlantic should make it such that random factors would not pose a major risk to the species. The ERA team concluded that the best available information does not indicate a decrease in the productivity of the porbeagle shark and that both DPSs exhibit significant diversity indicative of large populations (Curtis *et al.*, 2016).

Both DPSs have declined significantly from historical levels. In the North Atlantic, these declines appear to have been halted and the DPS' abundance and biomass are increasing (ICES/ICCAT, 2009; Campana *et al.*, 2010b; Campana *et al.*, 2012). Further declines are unlikely due to improved and continuing management. As described in the status review, the North Atlantic population is overfished, but overfishing is not occurring (Curtis *et al.*, 2016). Estimates of the population size are in the hundreds of thousands of individuals for just the Northwest Atlantic portion of the DPS (DFO, 2005; Campana *et al.*, 2010, 2012). The

population abundance and trends of porbeagle sharks throughout the Southern Hemisphere are stable or increasing. The declines in the Southern Hemisphere appear to be halted and, in some regions, the abundance has increased in recent years (ICES/ICCAT, 2009; Pons and Domingo, 2010; Semba *et al.*, 2013; Francis *et al.*, 2014; WCPFC, 2014; Curtis *et al.*, 2016).

Targeted removal from a population can result in a population structure (*e.g.*, size and sex composition) that has been modified from unfished conditions. If fisheries remove certain age classes or sexes (*e.g.*, selectively target the largest individuals in the population), the structure of the population will be modified. Porbeagle sharks are overfished and, therefore, it is likely the population structure (*e.g.*, the number of large females) has been reduced, resulting in a truncated size/age distribution. However, declines have been halted, and stocks are rebuilding. As the stocks rebuild, the population structure will return to its more natural state with a robust size/age composition.

**Growth rate/productivity:** The ERA team evaluated the information available on the porbeagle shark's growth rate/productivity. They determined that this is a medium risk factor for both DPSs. Life history characteristics of late age to maturity, low fecundity, slow population growth rates, and long generation time contribute to low productivity in porbeagle sharks. These characteristics make both DPSs vulnerable to overexploitation and slow to recover from depletion. This vulnerability is characteristic of species with this type of life history.

**Spatial structure/connectivity:** The ERA team evaluated the porbeagle shark's spatial structure and connectivity (*i.e.*, rates of exchange among populations). They concluded that this factor is very unlikely to contribute to the risk of extinction for either the North Atlantic or Southern Hemisphere DPS. While there is not mixing across the equator, tagging studies show that the species is highly mobile, and there are movements over long distances within the North Atlantic and the Southern Hemisphere. Genetic studies show that within each DPS, mixing occurs, and there is connectivity within each of the two DPSs. There is no evidence of isolation of any stock within either DPS. There is also no evidence that the range of the species has contracted over time or is likely to contract in the future (Curtis *et al.*, 2016). The ERA team ranked this factor as very low.

**Diversity:** The ERA team also evaluated the diversity within both DPSs. They concluded that this is a very low risk factor because diversity is high within each DPS. Genetic studies indicate high diversity in both DPSs, and there is connectivity across the ocean basins. The high genetic diversity indicates that, within hemispheres, the populations are not isolated. Significant differentiation within either DPS has not been identified, meaning that while diversity is high within each DPS (indicative of a large population), each stock within a DPS has similar genetics that are not distinct. The species does not appear to be at risk due to substantial changes or loss of variation in life history characteristics, population demography, morphology, behavior, or genetic characteristics.

#### Evaluation of Threats

**Habitat Destruction, Modification, or Curtailment:** The ERA team ranked this threat as very low for both DPSs. As described above, porbeagle sharks are highly mobile generalists. That is, they are not substantially dependent on any particular habitat type. Occurring in coastal and offshore waters, this shark is not dependent during any life stage on more vulnerable estuarine habitats, and there are no indications that its range has contracted or is expected to contract in the future (Curtis *et al.*, 2016). While their distribution is influenced by temperature and prey distributions, they have broad temperature tolerances (1–26 °C) and an opportunistic diet, feeding on a wide range of species, depending on what is available (Joyce *et al.*, 2002). Both factors make them less vulnerable to impacts from habitat changes.

The literature review found no information to indicate that there has been a change in distribution of porbeagle sharks due to climate change or that porbeagle sharks would be unable to adapt to potential changes in prey distribution. Changes in temperature in the range of those predicted under various climate scenarios (Hare *et al.*, 2016) are unlikely to have a significant impact on porbeagle sharks (Curtis *et al.*, 2016). Fabry *et al.*, (2008) indicate that increases in carbon dioxide (CO<sub>2</sub>) have the potential to affect pH levels in marine animals. Active animals have a higher capacity for buffering pH changes, and the tolerance of CO<sub>2</sub> by marine fish appears to be very high (Fabry *et al.*, 2008). Porbeagle sharks are an active and highly mobile species. Therefore, it is reasonable to expect that porbeagle sharks will tolerate changes in CO<sub>2</sub> and buffer pH (Compagno, 2001; Fabry *et al.*, 2008; Curtis *et al.*, 2016).



As detailed in the status review, they also appear to have low exposure to pollution and do not appear to be threatened by it. The National Shark Research Consortium (2007) determined that it was unlikely that infertility rates were associated with contaminant exposure. The available information indicates that the fitness of porbeagle sharks is not likely to be negatively impacted by mercury or other contaminants to any significant degree (Curtis *et al.*, 2016). Therefore, this threat is considered to be very low to both the North Atlantic and Southern Hemisphere DPSs.

**Overutilization:** Overutilization was ranked as medium in the threats assessment by each member of the ERA team. In evaluating the status of the species, Curtis *et al.* (2016) reviewed population dynamics, including population size, abundance trends, recruitment and depensation, and the effects of trade as most shark landings enter international trade. Porbeagle sharks have historically been fished commercially, and overutilization is considered the primary threat to porbeagle shark populations. They have primarily been harvested incidentally in longline fisheries targeting other highly migratory species. Incidental harvest occurs when the species is caught in a fishery targeting other species. Directed fisheries for porbeagle sharks have occurred in Canada, France, Norway, Faroe Islands, and Uruguay (Curtis *et al.*, 2016). Porbeagle stocks are overfished. Being overfished is not, by itself, equivalent to having a high risk of extinction. Currently, overfishing is not occurring and populations of porbeagle sharks appear to be stable or increasing, and further declines are considered unlikely, given conservation and management measures. Declines in catch in recent years are largely due to greater regulatory controls, especially in nations that had directed fisheries (DFO, 2005; ICCAT, 2009).

In the United States, commercial fishermen can land porbeagle under a directed or incidental shark permit. In the past, most porbeagle sharks have been landed via pelagic longline, but there have also been some incidental landings in Gulf of Maine fisheries targeting other species. According to logbook data, pelagic longline fishermen have not reported landing any porbeagle sharks in the last few years (2013–2015) and reported landing only between 3 and 23 sharks each year from 2010 through 2012 (NMFS, unpublished data). The majority of porbeagle sharks caught by pelagic longline fishermen from 2010 through 2015 were released alive (on average 78 percent per year).

There are strict regulations in the pelagic longline fishery including restrictions on hook size, hook type, and bait type. There are no mesh restrictions in the shark gillnet fishery under the management plan for highly migratory species. However, incidental gillnet landings of porbeagle sharks have occurred in the Gulf of Maine. Gillnet fisheries operating in this area are subject to the requirements of other fishery management plans such as the Northeast multispecies and monkfish plans. These plans restrict the mesh sizes and overall fishing effort in the Gulf of Maine. The commercial porbeagle shark fishery is regulated by a TAC of 11.3 mt dressed weight (dw) (24,912 lb dw) and a commercial quota. The U.S. commercial quota is the portion of the TAC that can be landed by fishermen with a commercial fishing permit and is adjusted annually based on any overharvest from previous years. In recent years, the commercial quota was reduced due to overharvest from previous fishing years. The commercial quota was 1.5 mt (3,307 lb) dw in 2010, 1.6 mt (3,479 lb) dw in 2011, and 0.7 mt (1,585 lb) dw in 2012. In 2013, the fishery was closed due to overharvest in the previous years. It reopened in 2014 with a quota of 1.2 mt (2,820 lb) dw; however, by early December 2014, 198 percent of the quota (2.5 mt dw or 5,586 lb dw) had been reported landed and triggered a commercial fishery closure for the rest of 2014 and all of 2015. This reported overharvest represents approximately 27 individual fish if the catch consisted of large adults (Curtis *et al.*, 2016). It is unlikely that this overharvest represents a significant threat to the species as it represents only a small fraction of the estimated abundance (*i.e.*, 27 fish out of hundreds of thousands). The 2016 commercial quota in the U.S. is 1.7 mt dw (3,594 lbs dw). There have been no landings in 2016 so far. In the past, most of the landings occurred in the fall.

Landings in Canada have progressively decreased from a peak of 1,400 mt (3,086,471 lbs) in 1995 to 92 mt (202,825 lbs) in 2007, corresponding with decreasing TAC levels. Canadian landings have been below the TAC since 2007. There were no landings in the directed fishery in 2012, and the directed fishery has been closed since 2013.

At mortality rates less than four percent of the vulnerable biomass, recovery for the Northwest Atlantic stock was estimated to be achievable in 5 to 100 years (Campana *et al.*, 2012). Estimated recovery times vary based on assumed productivity and harvest rates. The authors concluded that all the

analyses indicate that the porbeagle shark population can recover at modest fishing mortalities but that the time horizon for recovery is sensitive to the amount of human-induced mortality. They note that the known cause of human-induced mortality is bycatch, and it is under management controls (Campana *et al.*, 2012). Generally, the vulnerable biomass is that portion of the population that is biologically available to the fishery to catch. That is, it is of a size that can be caught in the gear used in the fishery; the vulnerable biomass is not the amount that they are allowed to catch. The gears used in the shark fisheries select for larger fish. In 2009, the vulnerable biomass in the Northwest Atlantic assessment was estimated to be between 4,406 and 5,092 mt (9,713,568 and 11,228,143 lbs) (Campana *et al.*, 2012).

There are restrictions on catch in the EU. In 2010, regulations set the EU TAC at zero in domestic waters and prohibited EU vessels from fishing for, retaining on board, transferring from one ship to another, and landing porbeagle sharks in international waters. Since 2010, the TAC has been at zero (SCRS, 2014). Under the older TAC of 436 mt (961,200 lbs), the Northeast Atlantic stock was projected to remain stable (ICES/ICCAT, 2009). The elimination of directed and bycatch fisheries is expected to allow the population to rebuild.

Data in the Southern Hemisphere are more limited. Since 2000, the CPUE in the Uruguayan fleet has been stable or slightly increasing (Pons and Domingo, 2010); and Uruguay prohibited retention of porbeagle sharks in 2013. Argentinian and Chilean fisheries have also harvested porbeagle sharks as incidental catch. In Argentina, catches ranged from 19–70 mt (41,890–154,300 lbs) from 2003–2006. Live sharks greater than 4.9 ft (1.5 m) are required to be released (CITES, 2013). In Chilean fisheries, landings are mostly unreported but are thought to comprise less than two percent of harvests (Hernandez *et al.*, 2008). Semba *et al.*, (2013) analyzed distribution and abundance trends in the Southern Hemisphere using CPUE data from the southern bluefin tuna longline fishery (see above). During this study, they found that the fishery occurs primarily on the edge of porbeagle shark habitat and that the majority of the shark's distribution is located outside of where the fishery operates. The authors also assert that there is only a small overlap between porbeagle sharks and the eastern Pacific purse seine fisheries. Catches in Australia and New Zealand have also declined significantly due to reductions in fishing effort and

protective regulations. The available data indicate that this stock has stabilized (ICES/ICCAT, 2009; Pons and Domingo, 2010; Semba *et al.*, 2013; Curtis *et al.*, 2016). Bycatch in non-directed fisheries could be an ongoing source of fishing mortality (Simpson and Miri, 2013).

Although catch on the high seas, including the Japanese catch of porbeagle sharks outside of the Canadian Exclusive Economic Zone, was once considered a significant factor in total catch from the Northwestern Atlantic stock of porbeagle sharks, the ICES/ICCAT (2009) assessment found that catch levels on the high seas occurred at low levels, indicating that bycatch and directed catch in this area is minor and does not pose a significant risk to the species (ICES/ICCAT, 2009). Information on catch ratios indicated that the relative abundance of porbeagle shark in the catch tended to be greatest on or near the continental shelf and declined markedly in the high seas (ICES/ICCAT, 2009). There were differences in the catch ratios among fisheries from different nations, but the relative proportion of porbeagle sharks in the high seas catch was almost always less than 2 percent (ICES/ICCAT, 2009). Bycatch of porbeagle sharks within some major ICES and Northwest Atlantic Fisheries Organization (NAFO) longline fisheries was reported to be very rare, and bycatch in the North and South Atlantic swordfish pelagic longline fisheries was very low (ICES/ICCAT 2009). Because North Atlantic porbeagle stocks are increasing in abundance, any ongoing discards or additional unreported mortality does not appear to be of a magnitude that is negatively impacting the stocks.

In addition to bycatch in pelagic longline gear, incidental catch in Canada and the United States occurs in trawl, gillnet, and bottom longline fisheries for various groundfish species (Simpson and Miri, 2013; NAFO, unpublished data; [www.nafo.int](http://www.nafo.int)). Using fisheries data and observer data, Simpson and Miri (2013) estimated bycatch in Canada's Newfoundland/Grand Banks Region (NAFO Division 3LNO). From 2006–2010, bycatch averaged 19 mt (41,890 lb) per year (Simpson and Miri, 2013). Total reported landings, which includes directed and incidental catch, from NAFO fisheries averaged 43.2 mt (95,240 lb) per year from 2010–2014 (NAFO unpublished data as cited in Curtis *et al.*, 2016). These data are included in assessment and management of the Northwest Atlantic stock.

Underreporting of incidental catch is often noted as a concern (ICES/ICCAT, 2009; CITES, 2013; Simpson and Miri, 2013), particularly in high seas fisheries. The level of capture of porbeagle sharks in the high seas longline fisheries is unclear as there is non-reporting and generic reporting of sharks. However, the ICES/ICCAT (2009) assessment estimated the potential porbeagle shark catch based on observed catch ratios of porbeagle sharks to tuna and swordfish. For the Northwest Atlantic, this analysis indicated that unaccounted high seas longline catches were a minor portion of the total reported catch historically and that catches have been even smaller in recent years (ICES/ICCAT, 2009). The data on non-reporting in Southern Hemisphere fisheries are less certain, but there is little evidence that these catches would significantly alter stock assessments (Semba *et al.*, 2013; Francis *et al.*, 2014).

Recreational catch is minimal (NMFS, 2013). Harvests are extremely low in the United States, Canada, and New Zealand (CITES, 2009; WCPFC, 2014). Regulations in Canada and the United States limit the gear that is allowed to be used for sharks. Most porbeagle sharks caught in recreational fisheries are released with a small percentage being retained. In the United States, porbeagle sharks must be at least 4.5 ft (137 cm) fork length and one shark (porbeagle or other) per vessel per trip can be landed. Recreational gears in the United States are restricted to rod and reel and handline.

Estimates of the catch in the United States vary depending on the data source analyzed. Data on recreational catch are available through the Marine Recreational Fisheries Statistics Survey (MRFSS) and from the large pelagic survey (LPS). MRFSS is a generalized angler survey; LPS is a specialized survey focused on highly migratory species such as pelagic sharks and tunas. This specialization allows for a higher level of sampling needed to obtain more precise estimates. However, because of limited overlap in species distribution and recreational fishery effort, some species such as porbeagle sharks are less commonly encountered by recreational anglers (Curtis *et al.*, 2016). During the summer when fishing effort is higher, porbeagle sharks are distributed farther north and offshore. Due to these lower encounters, even the specialized surveys are not able to produce precise estimates of overall catch. Data from the LPS survey from 2010 through 2015 indicate that 15 porbeagle sharks were observed or reported as kept and 103 were observed or reported as released alive; none were

observed or reported as released dead (NMFS, 2015).

When animals are captured and released, whether in commercial or recreational fisheries, it is important to understand at-vessel and post-release mortality. At-vessel mortality rate is the percentage of animals that are dead when retrieved from the fishing gear; post-release mortality refers to the percentage of animals that die after being released from fishing gear alive. Several researchers have evaluated at-vessel mortality, and mortality rates have varied. In several of the studies, at-vessel mortality in longline gear averaged around 20 percent (Marshall *et al.*, 2012; Griggs and Baird, 2013; Gallagher *et al.*, 2014; NMFS HMS Logbooks), while other studies have found higher rates up to approximately 44 percent (Francis *et al.*, 2004; Coelho *et al.*, 2012; Campana *et al.*, 2015), meaning that of the porbeagle sharks caught, 20–44 percent are dead when retrieved from the gear. Campana *et al.*, (2015) also evaluated post-release mortality rates as determined from PSAT studies. Healthy porbeagle sharks had a 10 percent post-release mortality rate, while injured porbeagle sharks had a 75 percent mortality rate. The overall mortality due to capture and discard mortality was then calculated as the sum of the post-release mortality rates for healthy and injured sharks, weighted by the frequency of injury as recorded by fisheries observers from 2010–2014, plus the observed frequency of dead sharks. Of porbeagle sharks reported by the observers, the mean annual percentage of injured sharks at release from pelagic longlines was 14.6 percent. Healthy sharks accounted for 41.6 percent. Applying the 75 percent mortality rate to the 14.6 percent injury rates and the 10 percent mortality rate to the 41.6 percent healthy sharks resulted in an overall post-release mortality rate of 27.2 percent. Total mortality includes both hooking and post-release mortality. In this study of the Canadian pelagic longline fishery, the mean at-vessel mortality was 43.8 percent. When combined with an overall post release mortality of live (healthy and injured sharks), this yielded an overall non-landed fishing mortality of 59 percent (Campana *et al.*, 2015).

Applying the 27 percent mean post-release mortality rate to the mean 20 percent mortality rate from the other studies suggests an average total mortality of approximately 47 percent. These studies suggest that there is great deal of variability in mortality rates. Survival rates are dependent on numerous factors, including soak time,

handling, water temperature, shark size, shark sex, degree of injury, etc. (Campana *et al.*, 2015). The studies indicate a moderate to high risk of mortality to a porbeagle shark once it is hooked on longline gear (Curtis *et al.*, 2016). The elimination of most directed fisheries and reductions in catches are likely reducing overall fishing mortality. The status review concluded that, while it had been the primary threat, overutilization no longer appears to be a threat to the species' survival anywhere in its range. The ERA team ranked the threat as medium as it is likely that it contributes or will contribute to the decline of the species. Continued fishery management efforts are necessary to rebuild populations and prevent future declines (Curtis *et al.*, 2016).

The ERA team also considered whether any of the demographic factors or other threats would interact with this threat to increase its overall threat level. As described above, stocks have been overfished; however, fishing pressure has decreased, and overfishing is no longer occurring. Stocks have stabilized, and some are increasing. Under current management, stocks are projected to continue to recover. Therefore, this threat was ranked as medium. The threat from overutilization would be higher if there were threats due to inadequate regulation coupled with the life history of porbeagle sharks (low productivity). As described below, the inadequacy of existing regulations measures was determined to be a low risk by the ERA team for the North Atlantic DPS and medium for the Southern Hemisphere DPS. Regulatory mechanisms to protect porbeagle sharks are widespread and improving throughout their range. The porbeagle shark's inherently low productivity indicates that recovery from overutilization will take a long time, on the order of decades. After considering these factors, the ERA team concluded that the threat from overutilization would not significantly increase due to interactions with other risk factors. Therefore, the ERA team maintained the ranking of medium.

The only interactions with overutilization identified by the status review team were the inadequacy of regulatory mechanisms and the porbeagle shark's growth rate/productivity. However, we also evaluated potential interactions between overutilization and spatial structure/connectivity and overutilization and diversity. Risks associated with spatial structure/connectivity and diversity are both ranked very low for the North Atlantic and Southern Hemisphere

DPSs. Porbeagle sharks are distributed broadly across both the North Atlantic and the Southern Hemisphere. The species is highly mobile, and, as described above, the available data indicate that there is connectivity within each DPS. The genetic studies also indicate that there is high genetic diversity and reproductive connectivity within each DPS. Genetic diversity appears to be sufficiently high and not indicative of isolated or depleted populations. Overutilization does not appear to have reduced the genetic diversity or limited the spatial distribution and connectivity. Given this and that the risk from both these factors is considered very low, interactions between these factors and overutilization would not increase the ranking from medium.

**Disease and Predation:** Disease and predation were ranked as very low risk for both DPSs. Porbeagle sharks are an apex predator residing at the top of the food web. Rarely, white sharks and orcas will prey on porbeagle sharks. However, predation on the species is very low. In general, sharks may be susceptible to diseases, but there is no evidence that disease has ever caused declines in shark populations (Curtis *et al.*, 2016). Sharks have shown occurrences of cancer, but rates are unknown (National Geographic, 2003). There is no evidence that either of these threats is negatively impacting either DPS.

**Inadequacy of Existing Regulatory Mechanisms:** This threat was ranked as low for the North Atlantic DPS and as medium for the Southern Hemisphere DPS. Porbeagle sharks are managed by Fisheries and Oceans Canada (DFO), NMFS, and the EU. Australia, New Zealand, Argentina, and Uruguay also manage porbeagle sharks in their waters. Several international organizations, including the North East Atlantic Fisheries Commission (NEAFC), NAFO, WCPFC, CCAMLR, and ICCAT, also work collaboratively on the science and management of this species. Porbeagle sharks are listed under several international conventions, including the UN Convention on the Law of the Sea (UNCLOS), the Barcelona Convention Protocol, the Bern Convention on the Conservation of European Wildlife and Habitats, the Convention for the Protection of the Marine Environment of the North-east Atlantic (OSPAR), the Bonn Convention on the Conservation of Migratory Species (CMS), and CITES.

Porbeagle sharks are listed under Annex I of UNCLOS which establishes conservation for highly migratory fish stocks on the high seas and encourages cooperation between nations on their

management. Listings under Annex II of the Barcelona Convention, Appendix III of the Bern Convention, and Annex V of the OSPAR Convention are intended to protect porbeagle sharks and their habitats in the Northeast Atlantic and the Mediterranean Sea. The CMS Migratory Shark Memorandum of Understanding and Appendix II of CMS aim to enhance conservation of migratory sharks and require range states to coordinate management efforts for trans-boundary stocks. Inclusion under Appendix II of CITES results in regulation of trade and close monitoring. International trade must be non-detrimental to the survival of the stock. CCAMLR implemented a moratorium on all directed shark fishing in the Antarctic region in 2006 and encourages the live release of incidentally caught sharks. Under these governments, organizations and conventions, porbeagle sharks are currently one of the most widely protected sharks in the world.

Management efforts and regulations that benefit porbeagle sharks have increased in the United States, Canada, and other waters in recent years. In the United States, the shark must be landed with its fins naturally attached (which helps prevent the illegal practice of finning, as species identification is enhanced by the presence of fins which may facilitate identification for enforcement and data collection), a commercial fishing permit is required, and the fishery is regulated by a TAC that is adjusted annually based on any overharvests. Other measures in highly migratory species fisheries in the United States include retention limits, time/area closures, observer requirements, and reporting requirements. These measures are designed to prevent overfishing and allow an increase in biomass. Canada has closed the mating grounds to directed fisheries, and catch is regulated by a TAC limit that has been lowered in recent years. In 2013, Canada suspended the directed porbeagle shark fishery and will not resume it until the stock has sufficiently recovered (Canada/ICCAT 2014, Doc. No. PA4-810). Canada also has a national plan for the conservation and management of sharks and their long-term sustainable use. This plan outlines monitoring and management measures, including observer coverage and dockside monitoring. New Zealand and Australia have harvest quotas, and catches have been greatly reduced. Uruguay has also implemented fishing regulations for porbeagle sharks.

An ICCAT working paper from the 19th Special Meeting of ICCAT (CPC/ICCAT, 2015; Doc. No. COC 314/2014)

summarizes how ICCAT members are implementing shark measures. Belize reported that they do not conduct scientific research for porbeagle sharks or catch them in the convention area; Japan reports that no tuna longline vessels are targeting porbeagle sharks and incidental catch is retained with all parts or released alive. The United Kingdom indicated that porbeagle sharks are rarely caught. Porbeagle sharks are a prohibited species in the EU and Turkey; there is no permitted harvest in these countries. Retention of porbeagle sharks has been prohibited in Uruguay since 2013. In 2015, ICCAT adopted additional measures that require all vessels promptly release unharmed porbeagle sharks when brought alive alongside the vessel and improved reporting, and encouraged research and monitoring to improve assessments. Similarly, NEAFC prohibited all directed fishing for porbeagle in the NEAFC area (high seas) by vessels flying their flag. Incidentally caught porbeagle sharks must be promptly released unharmed.

Domestic, regional, and international regulation designed to reduce catch and rebuild stocks have been broadly implemented. Directed porbeagle shark fisheries have been mostly eliminated, many fisheries require live release of incidentally caught animals, and trade restrictions have been implemented. This improved management has resulted in declining catches, and overfishing is not occurring. The ERA team ranked this factor as low for the North Atlantic population and as medium for the Southern Hemisphere, where there is less rigorous monitoring, reporting and enforcement of regulations resulting in more uncertainty in their effectiveness.

In both DPSs, this threat could interact with the medium threat of overutilization to increase the risk of extinction and with the demographic factor of slow population growth rates to increase the risk of extinction. The threat of overutilization has been reduced through improved management as has this threat. The shark's inherently low productivity means that recovery from past utilization will take decades, but this would not significantly increase the ranking of this threat as the current regulations have ended overfishing and stocks are rebuilding. The ERA team found that the significant interacting threats are being simultaneously reduced, supporting the low and medium rankings for the North Atlantic and Southern Hemisphere DPSs, respectively.

We also considered whether measures to protect the species (e.g., closed areas,

fishery restrictions, etc.) had been implemented effectively. With respect to the conservation measures described here, the measures have been implemented. Despite some uncertainties around the monitoring and enforcement of the measures in the Southern Hemisphere, both DPSs have stabilized and, in some areas are increasing. Therefore, regulations to reduce the threat of overutilization appear to be effective and are positively affecting the status of the porbeagle sharks in both DPSs.

#### *Other Natural or Manmade Factors Affecting the Porbeagle's Continued Existence*

Overall, this threat was ranked low for both DPSs. Genetic studies indicate that isolation is not a factor affecting this species in the North Atlantic. In the Southern Hemisphere, the population is widespread in a continuous circumglobal band, and there is no evidence that any of the populations in the Southern Hemisphere might be isolated. Given its migratory nature, isolation does not appear to be a factor impacting the porbeagle shark.

Low productivity has the potential to make the species more vulnerable to threats, but is considered in modelling and assessment and in management and conservation actions. Several Ecological Risk Assessments have evaluated the productivity of the porbeagle shark in terms of its vulnerability to certain fisheries. Results from these assessments have varied. Cortes *et al.*, (2010) and Murua *et al.*, (2012) found porbeagle sharks less vulnerable than other shark species to pelagic longline fisheries in the Atlantic and Indian Oceans, respectively. Cortes *et al.*, (2010) conducted a quantitative assessment that consisted of a risk analysis to evaluate the productivity of the stocks and a susceptibility analysis to assess their propensity to capture and mortality in pelagic longline fisheries. In this assessment, vulnerability considered both productivity and susceptibility to evaluate relative risk. They found that porbeagle sharks were less vulnerable than other shark species to pelagic longlines in the Atlantic Ocean (Cortes *et al.*, 2010). Murua *et al.*, (2012) also ranked the vulnerability of porbeagle sharks based on the productivity and susceptibility to fishing gear. In the Indian Ocean, porbeagle ranked eight (rankings 1–16 with lower numbers being more vulnerable (Murua *et al.*, 2012)). SCRS (2014) reported on a risk assessment carried out for 20 stocks of pelagic sharks, finding porbeagle sharks to rank fourth in vulnerability (1 being most

vulnerable) to pelagic longline gear. The Ecological Risk Assessment conducted by the committee was a quantitative assessment consisting of a risk analysis to evaluate productivity and susceptibility of stocks in the Atlantic to being caught in pelagic longline gear (SCRS, 2014; Cortes *et al.*, 2015).

The results of an ecological risk assessment are used to determine a species' vulnerability to a specific fishery and can be a first step in the assessment process. Although a risk assessment considering a specific vulnerability may rank porbeagle sharks higher than other sharks in some respects, this is not necessarily an indicator of a high risk of extinction. Thus, results of stock assessments, which incorporate additional and more quantitative sources of information than ERAs, should generally outweigh the qualitative outputs from ERAs when available.

Global climate change, including warming and acidification, is unlikely to substantially impact porbeagle populations. The species has an inherently high adaptive capacity. They are highly mobile, have a broad temperature tolerance, and have a generalist diet. They are highly likely to adapt to changing conditions. Chin *et al.*, (2010) found that continental shelf- and pelagic sharks have a low overall vulnerability to climate change.

In an assessment of 82 Northeast U.S. fishery species, Hare *et al.*, (2016) found that porbeagle sharks have, on a scale of low to very high, a high vulnerability to climate change. Exposure to warming ocean temperatures and ocean acidification was considered high for most species in this region (Hare *et al.*, 2016). This high sensitivity was influenced by the porbeagle shark's low productivity and overfished status. Most other sensitivity attributes, including habitat and prey specificity, mobility, early life history requirements, were considered to be low for porbeagle sharks (Hare *et al.*, 2016). Therefore, we expect the overall vulnerability to drop as populations rebuild. Hare *et al.*, (2016) indicated that the overall climate vulnerability ranking would drop to moderate if the poor stock status is removed as a factor. In addition, the mobility and temperature tolerances of the species are expected to limit the impacts from climate change. The distribution of porbeagle sharks may shift away from the northeast United States with climate change; its overall population is likely to persist (Curtis *et al.*, 2016). Due to their high mobility and temperature tolerances, the overall directional effect of climate changes was

considered to be neutral (Hare *et al.*, 2016).

This threat may interact with the threat of overutilization and the demographic factor of low population growth rates. Since overutilization is being reduced through improved management, which takes into account the porbeagle shark's life history (*e.g.*, restricting directed fishing in mating areas), this threat is expected to remain as low for both DPSs.

### Summary of Demographic Factors and Threats Affecting Porbeagle Sharks

Both demographic factors and threats were ranked on a scale from very low to very high by the ERA team members. For the demographic factors, diversity and spatial structure/connectivity were ranked very low for each DPS, abundance was ranked low for each DPS, and growth rate/productivity was ranked medium for each DPS. For the threats, habitat destruction, modification, or curtailment and disease or predation were both ranked very low for each DPS; inadequacy of existing regulation mechanisms was ranked low for the North Atlantic DPS and other natural or manmade threats was ranked low for each DPS; overutilization was ranked medium for each DPS and inadequacy of existing regulation mechanisms was ranked medium for the Southern Hemisphere DPS. No demographic factors or threats were ranked high or very high.

The only demographic factor ranked above low was growth rate/productivity. The porbeagle shark's life history traits make the populations vulnerable to threats and slow to recover from depletion. The only threats ranked above low are overutilization (both DPSs) and inadequacy of existing regulatory mechanisms (Southern Hemisphere DPS). These threats are ranked as medium. Recent management efforts across the globe have reduced fishing mortality. There are a number of countries or organizations that restrict the harvest of porbeagle sharks. Due to these efforts, stocks are no longer declining and most have begun to recover. Given their life history traits, recovery is likely to take decades, but demographic risks are mostly low and significant threats have been reduced. The inadequacy of existing regulatory mechanisms for the Southern Hemisphere DPS was ranked medium due to uncertainties in monitoring, reporting, and enforcement of regulations when compared to the North Atlantic, suggesting the Southern Hemisphere DPS may be more vulnerable to this threat.

### Overall Risk Summary

As described, the ERA team used a "likelihood analysis" to evaluate the overall risk of extinction. The ERA team did not find either DPS to be at high risk of extinction as no team members assigned points to this category. For the North Atlantic DPS, the current level of extinction risk was 7.5 percent likelihood of moderate risk, 80 percent likelihood of low risk, and 12.5 percent likelihood of not at risk. For the foreseeable future, the ERA team found that the level of moderate risk remained the same, the level of low risk decreased to 62.5 percent and the not-at-risk level increased to 30 percent. For the Southern Hemisphere population, the current levels were 25 percent likelihood of moderate risk, 72.5 percent likelihood of low risk, and 2.5 percent likelihood of not at risk. Similar to the North Atlantic DPS, the level of moderate risk for the Southern Hemisphere DPS remained at 25 percent in the foreseeable future; the low risk decreased to 70 percent, and the not at risk category increased to 5 percent.

While these numbers reflect the percentage of risk assigned to each category, we also evaluated the points assigned to each category by individual team members to better understand the risk. Each individual team member assigned 10 points across the risk categories. As described above, no points were assigned to the high risk category for the North Atlantic DPS for the current or foreseeable future categories of risk. In the North Atlantic DPS, no more than 1 point was assigned by any individual to the moderate risk currently or in the foreseeable future. Each team member assigned eight points to the low risk category and one or two points to the not at risk category for the current risk. For the foreseeable future, team members assigned 4 to 8 points to the 'low risk' and 1 to 6 to the 'not at risk' categories.

As with the North Atlantic DPS, each team member assigned 10 points across the four categories for the Southern Hemisphere DPS. No team member assigned points to the high risk category for this DPS for either the current or foreseeable future level of risk. For the current level of extinction risk, team members each assigned 2–3 points to the moderate category and 7–8 points to the low category; one team member assigned a single point to the not at risk category. For the level of risk through the foreseeable future, team members assigned 1–4 points to the moderate category and 6–8 points to the low category; two team members each

assigned one point to the not at risk category.

The ERA team determined that, overall, both DPSs are at low risk of extinction. While the overall risk is low, there is some likelihood of a moderate risk of extinction, especially in the Southern Hemisphere DPS. The scoring, along with the information in the status review, indicates that the moderate level of risk in the Southern Hemisphere population is due to the uncertainty in current stock status and projections for the Southern Hemisphere, and more uncertainty about the adequacy of current and future regulatory mechanisms, including fishery monitoring, reporting, and enforcement in that region. In addition, generation times are longer in the Southern Hemisphere and the DPS is potentially more vulnerable to depletion. Populations with longer generation times and low productivity cannot rebound as quickly as populations with short generation times and high productivity. Considering the factors and despite the uncertainty, each team member assigned the majority of the points to the low risk category, resulting in 75 percent of the points being assigned to the low/not at risk categories. Based on this, we conclude that, while there is some uncertainty, the Southern Hemisphere DPS is at low risk of extinction currently and in the foreseeable future. We also conclude that the North Atlantic DPS is at low risk of extinction currently and in the foreseeable future.

The ERA team noted that there is a higher likelihood that the North Atlantic DPS is at low risk of extinction than the Southern Hemisphere DPS. Despite these concerns, they still agreed that there was a much greater likelihood of Southern Hemisphere porbeagle sharks having an overall low risk of extinction. For both DPSs, the ERA team determined that overall extinction risk is likely to be lower in the foreseeable future (40 years) than it is currently, due to improved management and recent indications of population recoveries. This decrease in risk in the foreseeable future is reflected in the decrease in the percentages in the low level category and the increases in the not at risk category. This shift, while relatively small in the Southern Hemisphere, indicates that the porbeagle population will face fewer threats and populations will grow, provided effective management continues to be implemented. Recovery is likely to take decades, but the demographic risks are mostly low, and significant threats have been reduced.

We have independently reviewed the best available scientific and commercial information, including the status review report (Curtis *et al.*, 2016) and other published and unpublished information. We concluded that the two DPSs are not in danger of extinction or likely to become so in the foreseeable future throughout their ranges. As described earlier, an endangered species is “any species which is in danger of extinction throughout all or a significant portion of its range” and a threatened species is one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The ERA team ranked the demographic criteria and the five factors identified in the ESA and completed an assessment of overall risk of extinction. The ERA team provided this information to us to determine whether listing is warranted. We reviewed the results of the ERA and concurred with the team’s conclusions regarding extinction risk. We then applied the statutory definitions of “threatened species” and “endangered species” to determine if listing either of the DPSs based on the ERA results and other available information is warranted.

The ERA team concluded that the level of extinction risk to the North Atlantic DPS is low, with 92.5 percent of its likelihood points allocated to the “low risk” or “not at risk” category, both now and in the foreseeable future. Furthermore, the percentage assigned to the “not at risk” category increased for the foreseeable future, while the percentage assigned to the “low risk” category decreased. The ERA team allocated only 7.5 percent of its likelihood points to the “moderate extinction risk” category, both now and in the foreseeable future. Given this low level of risk and an evaluation of the demographic parameters and threats, we have determined that this DPS does not meet the definition of an endangered or threatened species and, as such, listing under the ESA is not warranted at this time.

The ERA team concluded that the Southern Hemisphere DPS was at low risk of extinction, though their distribution of likelihood points indicates that there was some uncertainty about this. However, 75 percent of the likelihood points were allocated to the “low risk” or “not at risk of extinction” category. The ERA Team’s uncertainty about the level of risk is due to some uncertainty in the stock status, projections, and fishery monitoring/enforcement. Described in detail elsewhere, the primary threat to porbeagle sharks is overfishing. Strict

management measures have been implemented to minimize this threat and, given that abundance and biomass have stabilized, these measures appear to be effective in addressing the threat. In addition, the available information indicates that the current population, while reduced from known historical levels, is sufficient to maintain population viability. We agree with the ERA Team’s conclusions, and, therefore, we conclude that this DPS does not warrant listing as threatened or endangered under the ESA at this time.

We also considered the risk of extinction of porbeagle sharks throughout their range. As described above, porbeagle sharks are found in both the Northern and Southern Hemispheres. There is no evidence that this range has contracted or that there has been any loss of habitat. The abundance and biomass have stabilized and in many areas are increasing. As indicated above, overfishing is the primary threat to the species throughout its range. Regulations, both domestic and international, have been put in place across the range and overfishing is not occurring. As the primary threat has been reduced, the population has stabilized, and neither of the DPSs are threatened or endangered, we have concluded that the species as a whole is not threatened or endangered.

#### Significant Portion of Its Range

Though we find that the porbeagle shark, the North Atlantic DPS of the porbeagle shark, and the Southern Hemisphere DPS of the porbeagle shark (all of which are considered “species” under the ESA) are not in danger of extinction now or in the foreseeable future, under the SPR Policy, we must go on to evaluate whether these species are in danger of extinction, or likely to become so in the foreseeable future, in a “significant portion of its range” (79 FR 37578; July 1, 2014).

When we conduct an SPR analysis, we first identify any portions of the range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant or in which a species may not be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the

affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required (79 FR 37578, July 1, 2014). Making this preliminary determination triggers a need for further review, but does not prejudice whether the portion actually meets these standards such that the species should be listed.

If this preliminary determination identifies a particular portion or portions for potential listing, those portions are then fully evaluated under the “significant portion of its range” authority as to whether the portion is *both* biologically significant *and* endangered or threatened. In making a determination of significance, we consider the contribution of the individuals in that portion to the viability of the species. That is, we determine whether the portion’s contribution to the viability is so important that, without the members in that portion, the species would be in danger of extinction or likely to become so in the foreseeable future.

The SPR policy further explains that, depending on the particular facts of each situation, NMFS may find it is more efficient to address the significance issue first, but in other cases it will make more sense to examine the status of the species in the potentially significant portions first. Whichever question is asked first, an affirmative answer is required to proceed to the second question. *Id.* “[I]f we determine that a portion of the range is not ‘significant,’ we will not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we will not need to determine if that portion is ‘significant.’” (79 FR 37587). Thus, if the answer to the first question is negative—whether it addresses the significance question or the status question—then the analysis concludes, and listing is not warranted.

As described elsewhere, the ERA team determined that there are two DPSs of porbeagle shark. Therefore, we will apply the SPR policy to the North Atlantic DPS, the Southern Hemisphere DPS, and the taxonomic species separately. The first step in applying the SPR policy is to identify portions of the range that may be significant and in which the species may be threatened or endangered.

In the North Atlantic DPS, we preliminarily identified two portions for further consideration—the western North Atlantic and the Mediterranean

Sea. Porbeagle sharks in the western North Atlantic may be more susceptible to threats than those in the eastern North Atlantic given that the western area includes known and suggested locations for mating and pupping (birthing). In addition, Campana *et al.* (2015b) identify Emerald Basin off Nova Scotia, Canada, as a potential sensitive life history area at least in the fall. Emerald Basin is an area with high densities of juveniles (Campana *et al.*, 2015b). The available research indicates that mating occurs in at least two locations. The first mating ground identified is on the Grand Banks, off southern Newfoundland and at the entrance to the Gulf of St. Lawrence. A second mating ground was identified on Georges Bank, based on high catch rates and similar aggregations of mature females that did not appear to be feeding (Campana *et al.*, 2010b). Research also suggests that there may be a pupping ground in the Sargasso Sea (Campana *et al.*, 2010a). Transmissions were received from 21 PSATs applied in the summer to porbeagle sharks off the eastern coast of Canada between 2001 and 2008. While males and immature sharks remained in the cool temperate water, all tagged mature females exited these waters by December, swimming to the Sargasso Sea. Pupping was strongly suggested based on the observation that only the sexually mature females made the migration and the residency in the Sargasso Sea overlapped with the known pupping period (Campana *et al.*, 2010a). However, pupping was not directly observed, only logically inferred from the tagging data. Both the mating and pupping stages of the life history can concentrate the species in specific areas making them more vulnerable to threats in those areas.

In order to determine whether the western North Atlantic constitutes a significant portion of the North Atlantic DPS' range, we first examined whether this portion of the range is biologically significant. A portion of the range of a species is "significant" if the portion's contribution to the viability of the species is so important that, without the members of that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range. As described above, this portion of the porbeagle range includes known mating and presumed pupping areas. These areas are important to the continued existence of the North Atlantic DPS as they allow for recruitment into the population. Recruitment into the population must occur for it to increase. While similar mating areas likely exist

in the Northeast Atlantic, these areas have not yet been described. In addition, the loss of porbeagle sharks in the western North Atlantic would result in a significant gap in the distribution of the North Atlantic DPS as this is a relatively large area relative to the spatial distribution throughout the North Atlantic. We have concluded that the western North Atlantic portion is a significant portion of the North Atlantic DPS under the SPR policy.

Next, we examined whether porbeagle sharks were endangered or threatened in the western North Atlantic portion. As described elsewhere, the primary threat to porbeagle sharks is fishing. In the mating areas, there is no directed fishery for porbeagle sharks. Similarly, there is no directed fishing in the area of Emerald Basin. Porbeagle sharks may be incidentally caught in other fisheries. In the Sargasso Sea (presumed to be a pupping area), tagged sharks undertook multiple ascents and descents between 50 and 850 m (164 and 2,789 ft) in waters between 8 and 23 °C (46 and 73 °F). The mean daily depth in April and May was 480 m (1,575 ft) indicating that most of the pupping period was spent at depth (Campana *et al.*, 2010), which would limit the interactions with anthropogenic threats. While individual porbeagle sharks may be caught as bycatch in fisheries on the mating grounds or in fisheries in the Sargasso Sea, the population in the Northwest Atlantic is increasing (see abundance and trends above). If fisheries in these areas were impacting the species to the extent that they are threatened or endangered, we would not expect the population to continue to grow. That is, impacting essential life history needs such as mating or pupping would result in less recruitment to the population, which would be reflected in the overall population trend. Accordingly, the primary threat in these areas is being addressed by existing regulatory measures, precluding directed fisheries in the areas. There are no other known significant threats in these areas. Based on an evaluation of threats in the areas, the population data, and life history of the species, we have determined that porbeagle sharks in the western North Atlantic are not threatened or endangered.

The second portion of the North Atlantic DPS' range identified as potentially significant under the SPR Policy is the Mediterranean Sea. Porbeagle shark abundance in the Mediterranean Sea is low, making them more vulnerable to threats in this area. As described elsewhere, the main threat to the species in the North Atlantic is fishing. In the Mediterranean Sea, catch

rates are low. However, the available data suggest that porbeagle sharks were historically uncommon in this area. In addition, the Mediterranean Sea represents a small portion of the range of the North Atlantic DPS, which is found in the Mediterranean Sea and the North Atlantic. Given that porbeagle sharks are widely distributed and highly mobile within the North Atlantic, we did not find that the loss of the Mediterranean Sea portion of the range would severely fragment and isolate the population to a point where individuals would be prevented from moving to suitable habitats or would have an increased vulnerability to threats. We also did not find that the loss of this portion would result in a level of abundance for the remaining North Atlantic population that would be so low or variable that it would cause the DPS to be at an increased risk of extinction due to environmental variation, anthropogenic perturbations, or compensatory processes. With mixing between the Northeast Atlantic and Mediterranean Sea animals, we would also expect that increases in the population in the Northeast Atlantic would have positive impacts on the population in the Mediterranean Sea as individuals may move from the Northeast Atlantic to the Mediterranean Sea. There is no substantial evidence that the loss of the Mediterranean portion of its range would isolate the North Atlantic DPS such that the remaining populations would be at risk of extinction from demographic processes. As described elsewhere, genetic data show that there is mixing between the populations across the North Atlantic. If this portion were lost, we would not expect it to result in a loss of genetic diversity in the DPS as a whole. Overall, we did not find any evidence to suggest that this portion of the range has increased importance over any other with respect to the species' survival. Given that porbeagle abundance is historically low in the Mediterranean Sea, that the Mediterranean Sea represents a small portion of the North Atlantic DPS' range, that mixing occurs between the Mediterranean Sea and the Northeast Atlantic, and that there is no evidence to suggest that the loss of the Mediterranean Sea portion would result in the remainder of the North Atlantic DPS being endangered or threatened, we have determined that this area does not represent a significant part of the North Atlantic DPS' range. Given that the portion is not significant, the question of whether it is endangered or threatened in this area is not addressed.



The other DPS considered under the SPR policy is the Southern Hemisphere DPS. Porbeagle sharks in the Southern Hemisphere are found in a continuous band around the globe, and the genetic data indicate that this population is mixing. For management purposes, ICCAT has identified two stocks in the South Atlantic. There may also be an Indo-Pacific stock. However, stock boundaries in the Southern Hemisphere remain unclear (Curtis *et al.*, 2016). As with the North Atlantic DPS, the greatest threat to porbeagle sharks in the Southern Hemisphere is fishing. Threats from fishing are likely more concentrated closer to the coast. However, there is no evidence that porbeagle sharks face a higher risk of extinction in one area of the Southern Hemisphere over any other. Under the SPR policy, we could not identify, in the preliminary analysis, any portion of the porbeagle shark's range in the Southern Hemisphere DPS that may be significant and in which members of the species may be endangered or threatened. As we did not find evidence to suggest that any one portion of the range has increased importance over any other with respect to that species' survival, no further analysis under the SPR policy was conducted.

Finally, we also considered whether there is any portion of the range of the taxonomic species that could be considered significant under the SPR Policy and that is threatened or endangered. Two portions of the range of the species could be considered significant: The North Atlantic DPS and the Southern Hemisphere DPS. However, as we described above in our extinction risk analysis, these two DPSs are not in danger of extinction throughout their ranges or likely to become so in the foreseeable future. Therefore, there is no need to consider further whether any of these two DPSs constitute significant portions of the species' range.

### Final Determination

Section 4(b)(1) of the ESA requires that listing determinations be based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have independently reviewed the best available scientific and commercial information, including the petition, public comments submitted in response to the 90-day finding (80 FR 16356; March 27, 2015), the status review

report (Curtis *et al.*, 2016), and other published and unpublished information, and we have consulted with species experts and individuals familiar with porbeagle sharks. We identified two DPSs of the porbeagle shark: The North Atlantic DPS and the Southern Hemisphere DPS. We considered each of the Section 4(a)(1) factors to determine whether it contributed significantly to the extinction risk of each DPS on its own. We also considered the combination of those factors to determine whether they collectively contributed significantly to the extinction risk of the DPSs. As previously explained, we could not identify any portion of either DPS' range that met both criteria of the SPR policy. Therefore, our determination set forth below is based on a synthesis and integration of the foregoing information, factors and considerations, and their effects on the status of the species throughout each DPS.

We conclude that neither the North Atlantic nor Southern Hemisphere DPS of porbeagle shark is presently in danger of extinction, nor is it likely to become so in the foreseeable future throughout all or a significant portion of its range. We summarize the factors supporting this conclusion as follows: (1) The species is broadly distributed over a large geographic range within each hemisphere, with no barrier to dispersal within each DPS; (2) genetic data indicate that, within each DPS, populations are not isolated, have high genetic diversity, and reproductive connectivity; (3) there is no evidence of a range contraction, and there is no evidence of habitat loss or destruction; (4) while the species possesses life history characteristics that increase its vulnerability to overutilization, overfishing is not currently occurring within the range of either the North Atlantic or Southern Hemisphere DPS; (5) the best available information indicates that abundance and biomass has stabilized in the Southern Hemisphere and is increasing in the North Atlantic; (6) while the current population size in both DPSs has declined from historical numbers, the population sizes are sufficient to maintain population viability into the foreseeable future and consist of at least hundreds of thousands of individuals; (7) the main threat to the species is fishery-related mortality from incidental catch; however, there are strict management requirements in place to minimize this threat in many areas of the North Atlantic and Southern Hemisphere, and these measures appear to be effective in addressing this threat;

(8) porbeagle shark's high mobility, broad temperature tolerance, and generalist habitat and opportunistic diet limit potential impacts from climate change; (9) directional effects of climate change are expected to be neutral; (10) there is no evidence that disease or predation is contributing to increasing the risk of extinction of either DPS; and (11) there is no evidence that either DPS is currently suffering from compensatory processes (such as reduced likelihood of finding a mate or mate choice or diminished fertilization and recruitment success) or is at risk of extinction due to environmental variation or anthropogenic perturbations.

Based on these findings, we conclude that the North Atlantic and Southern Hemisphere DPSs of the porbeagle shark are not currently in danger of extinction throughout all or a significant portion of their ranges, nor are they likely to become so within the foreseeable future. We have further concluded that the species as a whole is not currently in danger of extinction throughout all or a significant portion of its range nor is it likely to become so in the foreseeable future. Accordingly, the porbeagle shark does not meet the definition of a threatened or endangered species and, thus, does not warrant listing as threatened or endangered at this time.

Porbeagle sharks from Newfoundland, Canada to Massachusetts, and seasonally to New Jersey, were identified as a NMFS "species of concern" in 2006. A species of concern is one for which we have concerns regarding status and threats but for which insufficient information is available to indicate a need to list the species under the ESA. In identifying species of concern, we consider demographic and genetic diversity concerns; abundance and productivity; distribution; life history characteristics and threats to the species. Given the information presented in the status review and the findings of this listing determination, we are removing the designation of species of concern for porbeagle sharks in the North Atlantic DPS. This is a final action, and, therefore, we do not solicit comments on it.

### Classification

#### *National Environmental Policy Act*

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir. 1981), we have concluded

that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (See NOAA Administrative Order 216–6).

#### References

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 25, 2016.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2016–18101 Filed 7–29–16; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Availability of Seats for National Marine Sanctuary Advisory Councils

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** ONMS is seeking applications for vacant seats for eight of its 13 national marine sanctuary advisory councils and Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (advisory councils). Vacant seats, including positions (*i.e.*, primary member and alternate), for each of the advisory councils are listed in this notice under **SUPPLEMENTARY INFORMATION**. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; views regarding the protection and management of marine or Great Lake resources; and possibly the length of residence in the area affected by the sanctuary. Applicants chosen as members or alternates should expect to serve two or three year terms, pursuant to the charter of the specific national marine sanctuary advisory council or Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council.

**DATES:** Applications are due before or by Wednesday, August 31, 2016.

**ADDRESSES:** Application kits are specific to each advisory council. As such, application kits must be obtained from and returned to the council-specific addresses noted below.

- Channel Islands National Marine Sanctuary Advisory Council: Jessica Morten, NOAA Channel Islands National Marine Sanctuary, University of California, Santa Barbara, Ocean Science Education Building 514, MC 6155, Santa Barbara, CA 93106; 805–893–6433; email [Jessica.Morten@noaa.gov](mailto:Jessica.Morten@noaa.gov); or download applications from [http://channelislands.noaa.gov/sac/council\\_news.html](http://channelislands.noaa.gov/sac/council_news.html).
- Cordell Bank National Marine Sanctuary Advisory Council: Lilli Ferguson, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950; 415–464–5265; email [Lilli.Ferguson@noaa.gov](mailto:Lilli.Ferguson@noaa.gov); or download applications from <http://cordellbank.noaa.gov>.
- Florida Keys National Marine Sanctuary Advisory Council: Beth Dieveney, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040; 305–809–4710; email [Beth.Dieveney@noaa.gov](mailto:Beth.Dieveney@noaa.gov); or download applications from <http://floridakeys.noaa.gov/sac/welcome.html?s=sac>.
- Greater Farallones National Marine Sanctuary Advisory Council: Carolyn Gibson, Greater Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129; 415–970–5252; email [Carolyn.Gibson@noaa.gov](mailto:Carolyn.Gibson@noaa.gov); or download applications from <http://farallones.noaa.gov/manage/sac.html>.
- Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council: Shannon Ruseborn, NOAA Inouye Regional Center, NOS/ONMS/HHWNMS/Shannon Ruseborn, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818; 808–725–5905; email [Shannon.Ruseborn@noaa.gov](mailto:Shannon.Ruseborn@noaa.gov); or download applications from [http://hawaiihumpbackwhale.noaa.gov/council/council\\_app\\_accepting.html](http://hawaiihumpbackwhale.noaa.gov/council/council_app_accepting.html).
- Monitor National Marine Sanctuary Advisory Council: William Sassorossi, Monitor National Marine Sanctuary, 100 Museum Drive, Newport News, VA 23606; 757–591–7329; email [William.Sassorossi@noaa.gov](mailto:William.Sassorossi@noaa.gov); or download applications from <http://monitor.noaa.gov/advisory/news.html>.
- National Marine Sanctuary of American Samoa Advisory Council: Joseph Paulin, National Marine Sanctuary of American Samoa, Tauese P.F. Sunia Ocean Center, P.O. Box 4318, Pago Pago, American Samoa 96799; 684–633–6500 extension 226; email [Joseph.Paulin@noaa.gov](mailto:Joseph.Paulin@noaa.gov); or download

applications from <http://americansamoa.noaa.gov/>.

- Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: Allison Ikeda, NOAA Inouye Regional Center, NOS/ONMS/PMNM/Allison Ikeda, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818; 808–725–5818; email [Allison.Ikeda@noaa.gov](mailto:Allison.Ikeda@noaa.gov); or download applications from [www.papahānaumokuākea.gov/council](http://www.papahānaumokuākea.gov/council).

- Stellwagen Bank National Marine Sanctuary Advisory Council: Elizabeth Stokes, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066; 781–545–8026 extension 201; email [Elizabeth.Stokes@noaa.gov](mailto:Elizabeth.Stokes@noaa.gov); or download applications from <http://stellwagen.noaa.gov/>.

**FOR FURTHER INFORMATION CONTACT:** For further information on a particular national marine sanctuary advisory council, please contact the individual identified in the **ADDRESSES** section of this notice.

**SUPPLEMENTARY INFORMATION:** ONMS serves as the trustee for a network of underwater parks encompassing more than 170,000 square miles of marine and Great Lakes waters from Washington state to the Florida Keys, and from Lake Huron to American Samoa. The network includes a system of 13 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments. National marine sanctuaries protect our nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustain healthy environments that are the foundation for thriving communities and stable economies. One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. National marine sanctuary advisory councils are community-based advisory groups established to provide advice and recommendations to the superintendents of the national marine sanctuaries and Papahānaumokuākea Marine National Monument on issues including management, science, service, and stewardship; and to serve as liaisons between their constituents in the community and the sanctuary. Additional information on ONMS and its advisory councils can be found at <http://sanctuaries.noaa.gov>. Materials related to the purpose, policies, and operational requirements for advisory councils can be found in the charter for a particular advisory council (<http://>

*sanctuaries.noaa.gov/management/ac/council\_charters.html*) and the *National Marine Sanctuary Advisory Council Implementation Handbook* (<http://sanctuaries.noaa.gov/management/ac/acref.html>).

The following is a list of the vacant seats, including positions (*i.e.*, primary member or alternate), for each of the advisory councils currently seeking applications for primary members and alternates:

*Channel Islands National Marine Sanctuary Advisory Council: Education (Primary); Education (Alternate); Tourism (Primary); Tourism (Alternate).*

*Cordell Bank National Marine Sanctuary Advisory Council: Education (Primary); Education (Alternate); Fishing (Primary); Fishing (Alternate).*

*Florida Keys National Marine Sanctuary Advisory Council: Boating Industry (Primary); Boating Industry (Alternate); Citizen-at-Large (Upper Keys) (Primary); Citizen-at-Large (Upper Keys) (Alternate); Diving (Upper Keys) (Primary); Diving (Upper Keys) (Alternate); Fishing (Charter Sports Fishing) (Primary); Fishing (Charter Sports Fishing) (Alternate); Fishing (Recreational) (Primary); Fishing (Recreational) (Alternate); Research and Monitoring (Primary); Research and Monitoring (Alternate); Tourism (Lower Keys) (Primary); Tourism (Lower Keys) (Alternate).*

*Greater Farallones National Marine Sanctuary Advisory Council: Mendocino/Sonoma County Community-at-Large (Primary); Mendocino/Sonoma County Community-at-Large (Alternate); Youth (Primary).*

*Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council: Citizen-at-Large (Primary); Conservation (Primary); Education (Primary); Honolulu County (Primary); Lānaʻi Island (Primary); Molokaʻi Island (Primary); Molokaʻi Island (Alternate); Native Hawaiian (Primary); Ocean Recreation (Primary).*

*Monitor National Marine Sanctuary Advisory Council: Heritage Tourism (Primary); Recreational/Commercial Fishing (Primary).*

*National Marine Sanctuary of American Samoa Advisory Council: Education (Primary).*

*Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: Commercial Fishing (Primary); Commercial Fishing (Alternate); Conservation (Primary); Native Hawaiian (Alternate); Native Hawaiian Elder (Primary); Native Hawaiian Elder (Alternate); Research (Alternate).*

*Stellwagen Bank National Marine Sanctuary Advisory Council: Business/Industry (Alternate).*

**Authority:** 16 U.S.C. 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 24, 2016.

**John Armor,**

*Acting Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2016-17917 Filed 7-29-16; 8:45 am]

**BILLING CODE 3510-NK-P**

## **BUREAU OF CONSUMER FINANCIAL PROTECTION**

**[Docket No.: CFPB-2016-0040]**

### **Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, “Evaluation of Financial Empowerment Training Program.”

**DATES:** Written comments are encouraged and must be received on or before August 31, 2016 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- **Electronic:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **OMB:** Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395-5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

*Please note that comments submitted after the comment period will not be accepted.* In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

### **FOR FURTHER INFORMATION CONTACT:**

Documentation prepared in support of this information collection request is available at [www.reginfo.gov](http://www.reginfo.gov) (this link becomes active on the day following publication of this notice). Select “Information Collection Review,” under “Currently under review, use the dropdown menu “Select Agency” and select “Consumer Financial Protection Bureau” (recent submissions to OMB will be at the top of the list). The same documentation is also available at <http://www.regulations.gov>. Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435-9575, or email: [CFPB\\_PRA@cfpb.gov](mailto:CFPB_PRA@cfpb.gov). *Please do not submit comments to this email box.*

### **SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Evaluation of Financial Empowerment Training Program.

*OMB Control Number:* 3170-XXXX (Formerly, 3170-0038).

*Type of Review:* Extension with change of a currently approved collection.

*Affected Public:* Government social services entities, and not-for-profit institutions.

*Estimated Number of Respondents:* 15,750.

*Estimated Total Annual Burden Hours:* 10,338.

*Abstract:* The Bureau’s Office of Financial Empowerment (Empowerment) is responsible for developing strategies to improve the financial capability of low-income and economically vulnerable consumers, such as consumers who are unbanked or underbanked, those with thin or no credit file, and households with limited savings. To address the needs of these consumers, Empowerment has developed the Your Money, Your Goals toolkit and training program. These resources equip frontline staff and volunteers in a range of organizations to provide relevant and effective information, tools, and technical assistance designed to improve the financial outcomes and capability of these vulnerable consumers. The Bureau seeks to renew approval of the information collection plan (ICP) to collect qualitative data related to evaluating the effectiveness of this toolkit, collateral materials, and training program. The proposed collections will focus on evaluating: (1) Your Money, Your Goals training practices, toolkit, and collateral materials in enhancing the ability of frontline staff and volunteers to inform and educate low-

income consumers about managing their finances; (2) and to assess the scope of workshop participants' use of the resources with the people they serve. The Bureau expects to collect qualitative data through paper-based and web-based surveys.

**Request for Comments:** The Bureau issued a 60-day **Federal Register** notice on May 16, 2016 (81 FR 30256). This request is to obtain approval to renew the OMB approval for the forms approved under OMB control number 3170-0038. However, since the Bureau is converting this OMB approval from a generic PRA approval to a standard PRA approval, OMB has requested that the Bureau obtain a new OMB control number for these forms. Upon OMB approval of this request, OMB No. 3170-0038 will be discontinued. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 26, 2016.

**Darrin A. King,**

*Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.*

[FR Doc. 2016-18064 Filed 7-29-16; 8:45 am]

**BILLING CODE 4810-AM-P**

## **BUREAU OF CONSUMER FINANCIAL PROTECTION**

**[Docket No.: CFPB-2016-0041]**

### **Agency Information Collection Activities: Comment Request**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau or CFPB) is requesting a new information collection

titled, "Consumer Response Company Response Survey."

**DATES:** Written comments are encouraged and must be received on or before September 30, 2016 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- **Electronic:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- **Hand Delivery/Courier:** Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

*Please note that comments submitted after the comment period will not be accepted.* In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

**FOR FURTHER INFORMATION CONTACT:** Documentation prepared in support of this information collection request is available at [www.regulations.gov](http://www.regulations.gov). Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435-9575, or email: [CFPB\\_PRA@cfpb.gov](mailto:CFPB_PRA@cfpb.gov). *Please do not submit comments to this mailbox.*

#### **SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Consumer Response Company Response Survey.

*OMB Control Number:* 3170-00NEW.

*Type of Review:* New collection.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 43,050.

*Estimated Total Annual Burden Hours:* 3,900.

*Abstract:* The purpose of this information collection is to incorporate a short survey into the complaint closing process. Consumers will have the option to provide feedback on the company's response to and handling of their complaint via all channels including online, phone, fax, and mail. The results of this feedback will be shared with the company that responded to the complaint to inform its complaint handling. The feedback will also be used to inform CFPB's work to supervise companies, enforce Federal

consumer financial laws, write better rules and regulations and monitor the market for consumer financial products and services. Consistent with the Bureau's policy statement on Disclosure of Consumer Complaint Data, the Bureau will evaluate the data collected from consumer feedback before publication on the Consumer Complaint Database. The Bureau anticipates publication of consumer feedback to highlight positive company behavior, provide consumers with timely and understandable information about consumer financial products and services, and improve the functioning, transparency, and efficiency of markets for such products and services. Only those feedback narratives for which opt-in consumer consent is obtained, and to which robust personal information scrubbing standard and methodology is applied, will be eligible for publication.

This information collection reflects comments received in response to the Notice and Request for Information (RFI) the Bureau issued on March 24, 2015 (80 FR 15583), seeking input from the public on the potential collection and sharing of information about consumers' positive interactions with financial service providers including providing more information about a company's complaint handling such as highlighting the quality of responses to consumers by replacing the consumer "dispute" function with a two-part consumer feedback process. The consumer will have the ability to rate the company's response to and handling of his or her complaint on a one to five scale and provide a narrative description in support of the rating. Positive feedback about the company's handling of the consumer's complaint would be reflected by both high satisfaction scores and by the narrative in support of the score. Negative feedback about the company's handling of the consumer's complaint would be better supported and more useful to companies than the current "dispute" function. The Company Response Survey will replace the "dispute" option and allow consumers to offer both positive and negative feedback on their complaint experience.

**Request For Comments:** Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the

information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: July 27, 2016.

**Darrin A. King,**

*Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.*

[FR Doc. 2016-18128 Filed 7-29-16; 8:45 am]

**BILLING CODE 4810-AM-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Charter Amendment of Department of Defense Federal Advisory Committees

**AGENCY:** Department of Defense.

**ACTION:** Amendment of Federal Advisory Committee.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that it is amending the charter for the Defense Innovation Advisory Board.

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703-692-5952.

**SUPPLEMENTARY INFORMATION:** This committee's charter is being amended in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102-3.50(d). The amended charter and contact information for the Designated Federal Officer (DFO) can be obtained at <http://www.facadatabase.gov/>.

The DoD is amending the charter for the Defense Innovation Advisory Board previously announced on page 18842 of the **Federal Register**, Volume 81, Number 63, dated April 1, 2016. Specifically, the DoD is changing the name of the Defense Innovation Advisory Board to the Defense Innovation Board ("the Board"), and increasing the Board's total membership. The membership for the Defense Innovation Advisory Board was limited to no more than 15 members, but the DoD is increasing the membership for the Board to no more than 20 members. In addition, the DoD is appointing three, non-voting ex-officio members to the Board, and their

inclusion will not count toward the total membership. The three, non-voting ex-officio members are the chairs of the Defense Business Board, the Defense Policy Board, and the Defense Science Board. All other aspects of the Defense Innovation Advisory Board's charter, as previously announced, will apply to the Board.

Dated: July 26, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016-18072 Filed 7-29-16; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Rehabilitation Services Administration—Disability Innovation Fund—Transition Work-Based Learning Model Demonstrations

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

#### Overview Information

*Rehabilitation Services Administration—Disability Innovation Fund—Transition Work-Based Learning Model Demonstrations*

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.421B.

#### DATES:

*Applications Available:* August 1, 2016.

*Date of Pre-Application Webinar:* August 4, 2016.

*Deadline for Transmittal of Applications:* September 6, 2016.

#### Full Text of Announcement

##### I. Funding Opportunity Description

**Purpose of Program:** The purpose of the Disability Innovation Fund (DIF) Program, as provided by the Consolidated Appropriations Act, 2015 (Pub. L. 113-235), is to support innovative activities aimed at improving the outcomes of "individuals with disabilities," as defined in section 7(20)(A) of the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 705(20)(A)).

**Priorities:** This notice includes one absolute priority and two competitive preference priorities. These priorities are from the notice of final priorities, requirements, and definition (NFP) for this competition, published elsewhere in this issue of the **Federal Register**.

**Absolute Priority:** For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

This priority is:

**Absolute Priority—Transition Work-Based Learning Model Demonstrations.**

**Note:** The full text of the absolute priority is included in the NFP for this competition, published elsewhere in this issue of the **Federal Register**.

**Competitive Preference Priorities:** For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we will award two additional points for Competitive Preference Priority 1 and up to five additional points for Competitive Preference Priority 2 to an application, depending on how well the application meets these competitive preference priorities.

**Competitive Preference Priority 1—Evidence of Promise Supporting the Proposed Model.**

**Competitive Preference Priority 2—Project Evaluation Designed to Meet the What Works Clearinghouse Evidence Standards.**

**Note:** The full text of the competitive preference priorities is included in the NFP for this competition, published elsewhere in this issue of the **Federal Register**.

#### Requirements

The project requirements for this competition are from the NFP for this competition, published elsewhere in this issue of the **Federal Register**, and are in effect for FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition. The full text of the requirements is included in the NFP.

#### Definitions

The following definitions are from the Workforce Innovation and Opportunity Act (WIOA), the Rehabilitation Act, 34 CFR part 77, and the NFP. The source of each definition is noted following the text of the definition.

**Career pathway** means a combination of rigorous and high-quality education, training, and other services that—

(a) Aligns with the skill needs of industries in the economy of the State or regional economy involved;

(b) Prepares an individual to be successful in any of a full range of

secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*);

(c) Includes counseling to support an individual in achieving the individual's education and career goals;

(d) Includes, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(e) Organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(f) Enables an individual to attain a secondary school diploma or its recognized equivalent and at least one recognized postsecondary credential; and

(g) Helps an individual enter or advance within a specific occupation or occupational cluster.

*Source:* Section 3(7) of WIOA.

*Competitive integrated employment* means work that is performed on a full-time or part-time basis (including self-employment)—

(a) For which an individual—

(1) Is compensated at a rate that—

(i)(A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate specified in the applicable State or local minimum wage law; and

(B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(ii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(2) Is eligible for the level of benefits provided to other employees;

(b) That is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and

who are in comparable positions interact with other persons; and

(c) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

*Source:* Section 7(5) of the Rehabilitation Act.

*Customized employment* means competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the strengths, needs, and interests of the individual with a significant disability, is designed to meet the specific disabilities of the individual with a significant disability and the business needs of the employer, and is carried out through flexible strategies, such as—

(A) Job exploration by the individual;

(B) Working with an employer to facilitate placement including—

(i) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(ii) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(iii) Representation by a professional chosen by the individual, or self-representation of the individual, in working with an employer to facilitate placement; and

(iv) Providing services and supports at the job location.

*Source:* Section 7(7) of the Rehabilitation Act.

*Evidence of promise* means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the conditions in both paragraphs (i) and (ii) of this definition are met:

(i) There is at least one study that is a—

(A) Correlational study with statistical controls for selection bias;

(B) Quasi-experimental design study that meets the What Works Clearinghouse Evidence Standards with reservations; or

(C) Randomized controlled trial that meets the What Works Clearinghouse Evidence Standards with or without reservations.

(ii) The study referenced in paragraph (i) of this definition found a statistically significant or substantively important (defined as a difference of 0.25 standard

deviations or larger) favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

*Source:* 34 CFR 77.1(c).

*Independent evaluation* means an evaluation that is designed and carried out independent of and external to the grantee but in coordination with any employees of the grantee who develop a process, product, strategy, or practice that is currently being implemented as part of the grant's activities.

*Source:* NFP.

*Individual with a disability* means an individual who—

(a) Has a physical or mental impairment that for such individual constitutes or results in a substantial impediment to employment; and

(b) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to Title I, III, or VI of the Rehabilitation Act.

*Source:* Section 7(20) of the Rehabilitation Act.

*Logic model* (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.*, the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

*Source:* 34 CFR 77.1(c).

*Pre-employment transition services* means services provided in accordance with section 113 of the Rehabilitation Act.

*Source:* Sections 7(30) and 113 of the Rehabilitation Act.

*Quasi-experimental design study* means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations (but not What Works Clearinghouse Evidence Standards without reservations).

*Source:* 34 CFR 77.1(c).

*Randomized controlled trial* means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between

the average outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.

*Source:* 34 CFR 77.1(c).

*Relevant outcome* means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve, consistent with the specific goals of a program.

*Source:* 34 CFR 77.1(c).

*Strong theory* means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

*Source:* 34 CFR 77.1(c).

*Student with a disability* means an individual with a disability who—

(A)(1) Is not younger than the earliest age for the provision of transition services under section

614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or

(2) If the State involved elects to use a lower minimum age for receipt of pre-employment transition services under the Rehabilitation Act, is not younger than that minimum age; and

(B)(1) Is not older than 21 years of age; or

(2) If the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), is not older than that maximum age; and

(C)(1) Is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 *et seq.*); or

(2) Is an individual with a disability, for purposes of section 504 of the Rehabilitation Act.

*Source:* Section 7(37)(A) of the Rehabilitation Act.

*Supported employment* means competitive integrated employment, including customized employment, or employment in an integrated work setting in which individuals are working on a short-term basis toward competitive integrated employment, that is individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individuals involved, for individuals with the most significant disabilities—

(A)(i) For whom competitive integrated employment has not historically occurred; or

(ii) For whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disability, need

intensive supported employment services and extended services after the transition described in section (7)(13)(C) of the Rehabilitation Act, in order to perform the work involved.

*Source:* Section 7(38) of the Rehabilitation Act.

*What Works Clearinghouse Evidence Standards* means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: <http://ies.ed.gov/ncee/www/DocumentSum.aspx?sid=19>.

*Source:* 34 CFR 77.1(c).

**Program Authority:** Consolidated Appropriations Act, 2015 (Pub. L. 113–235).

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 386. (e) The NFP for this competition, published elsewhere in this issue of the **Federal Register**.

## II. Award Information

**Type of Award:** Discretionary grants negotiated as cooperative agreements.

**Estimated Available Funds:** \$30,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 from the list of unfunded applications from this competition.

**Estimated Range of Awards:** \$800,000–\$1,800,000.

**Note:** The Department estimates a wide range of awards given the potentially large differences in the scope of funded projects, including the number of students served and the intensity of services provided, the number of local sites where the proposed model will be implemented, and the scope and rigor of the proposed evaluation, particularly for those projects implementing proposals that met the requirements of Competitive Preference Priority 2.

**Maximum Award:** We will reject any application that proposes a budget exceeding \$1,800,000 (for applications that meet Competitive Preference Priority 2) or \$1,000,000 (for all other

applications) for a single budget period of 12 months.

**Estimated Number of Awards:** 4–7.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 60 months.

Applicants under this competition are required to provide detailed budget information for each of the five years of this project and for the total grant.

## III. Eligibility Information

1. **Eligible Applicants:** State Vocational Rehabilitation Agencies.

2. **Cost Sharing or Matching:** This competition does not require cost sharing or matching.

## IV. Application and Submission Information

1. **Address to Request Application Package:** You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: [www.ed.gov/fund/grant/apply/grantapps/index.html](http://www.ed.gov/fund/grant/apply/grantapps/index.html).

To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: [www.EDPubs.gov](http://www.EDPubs.gov) or at its email address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.421B.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person listed under *Accessible Format* in section VIII of this notice.

2. **Content and Form of Application Submission:** Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this competition.

**Page Limit:** The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Because of the limited time available to review applications and make a recommendation for funding, we strongly encourage applicants to limit the application narrative to no more than 75 pages, using the following standards:



- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

In addition to the page-limit guidance on the application narrative section, we recommend that you adhere to the following page limits, using the standards listed above: (1) The abstract should be no more than one page, (2) the resumes of key personnel should be no more than two pages per person, and (3) the bibliography should be no more than three pages. The only optional materials that will be accepted are letters of support. Please note that our reviewers are not required to read optional materials.

Please note that any funded applicant’s application abstract will be made available to the public.

### 3. Submission Dates and Times:

*Applications Available:* August 1, 2016.

### *Date of Pre-Application Webinar:*

Interested parties are invited to participate in a pre-application Webinar. The pre-application Webinar with staff from the Department will be held at 2:00 p.m., Washington DC time, on Thursday, August 4, 2016. The Webinar will be recorded. For further information about the pre-application Webinar, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Deadline for Transmittal of Applications:* September 6, 2016.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual’s application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2016.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

- a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

- b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government’s primary registrant database;

- c. Provide your DUNS number and TIN on your application; and

- d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: <http://fedgov.dnb.com/webform>. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and

register your DUNS number and TIN. We strongly recommend that you register early.

**Note:** Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov*.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at [www.SAM.gov](http://www.SAM.gov). To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: [www2.ed.gov/fund/grant/apply/sam-faqs.html](http://www2.ed.gov/fund/grant/apply/sam-faqs.html).

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: [www.grants.gov/web/grants/register.html](http://www.grants.gov/web/grants/register.html).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

### a. *Electronic Submission of Applications.*

Applications for grants under the Transition Work-Based Learning Model Demonstrations, CFDA number 84.421B, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at [www.Grants.gov](http://www.Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Rehabilitation Services Administration—Disability Innovation Fund—Transition Work-Based Learning Model Demonstrations at [www.Grants.gov](http://www.Grants.gov). You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.421, not 84.421B).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.

- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at [www.G5.gov](http://www.G5.gov). In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: [www.grants.gov/web/grants/applicants/apply-for-grants.html](http://www.grants.gov/web/grants/applicants/apply-for-grants.html).

- You will not receive additional point value because you submit your

application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (e.g., Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason, it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by

*Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

**Application Deadline Date Extension in Case of Technical Issues with the *Grants.gov* System:** If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1-800-518-4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

**Exception to Electronic Submission Requirement:** You qualify for an exception to the electronic submission

requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
  - You do not have the capacity to upload large documents to the *Grants.gov* system;
- and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: RoseAnn Ashby, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue SW., Room 5057, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7593.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

#### *b. Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.421B), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

- (1) A legible dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

#### *c. Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.421B), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

- (2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

#### **V. Application Review Information**

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and 34 CFR 386.20 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project

objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

#### **VI. Award Administration Information**

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* The Government Performance and Results Act of 1993 directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against these goals.

The goal of the Transition Work-Based Learning Model Demonstration is to identify and demonstrate practices, which are supported by evidence, in providing work-based learning experiences in integrated settings under the VR program, in collaboration with State and local educational agencies, and other key partners within the local community, to improve post-school outcomes for students with disabilities. Such practices must be supported by strong theory and rigorously evaluated. Under the absolute priority, grant recipients are required to develop and implement a plan to measure the model demonstration project's performance and outcomes, including an evaluation of the practices and strategies implemented by the project. The cooperative agreement will specify the measures that will be used to assess the grantees' performance in achieving the goals and objectives of the competition, including the extent to which:

- Project participants successfully complete at least two work-based learning experiences, including one paid work experience;
- Participation in the project demonstrates that work-based learning experiences have contributed to student academic and career planning;
- Project participants enroll in postsecondary education or training; and

- Project participants obtain competitive integrated employment, including supported employment.

In its annual and final performance report to the Department, grant recipients will be expected to report the data specified in the absolute priority described in this notice and any additional data outlined in the cooperative agreement that is needed to assess its project's performance. The cooperative agreement and annual report will be reviewed by RSA and the grant recipient between the third and fourth quarter of each project period. Adjustments will be made to the project accordingly in order to ensure demonstrated progress towards meeting the goal and outcomes of the project.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** RoseAnn Ashby, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue SW., Room 5057, PCP, Washington, DC 20202–5076. Telephone: (202) 245–7258, or by email: [roseann.ashby@ed.gov](mailto:roseann.ashby@ed.gov).

If you use a TDD or a TTY, call the Federal Relay Service, toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the

official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 26, 2016.

**Sue Swenson,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2016–18030 Filed 7–29–16; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Promise Neighborhoods Program—Implementation Grant Competition; Correction Catalog of Federal Domestic Assistance (CFDA) Number: 84.215N.

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Notice; correction.

**SUMMARY:** On July 8, 2016, we published in the **Federal Register** (81 FR 44741) a notice inviting applications for new awards for fiscal year (FY) 2016 for the Promise Neighborhoods program (Promise Neighborhoods NIA). This document corrects two dates in the Promise Neighborhoods NIA.

**DATES:** Deadline for Notice of Intent to Apply: August 11, 2016. Deadline for Intergovernmental Review: November 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** Adrienne Hawkins, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W256, Washington, DC 20202–5970. Telephone: (202) 453–5638, or by email: [Adrienne.hawkins@ed.gov](mailto:Adrienne.hawkins@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** This document corrects: (1) The deadline for intergovernmental review; and (2) the deadline for the notice of intent to apply. All other requirements and conditions stated in the Promise Neighborhoods NIA remain the same.

**Corrections**

In FR Doc. No. 2016–16130, in the **Federal Register** of July 8, 2016 (81 FR 44741), we make the following corrections:

(a) On page 44742, in the left-hand column, revise lines 17–18 to read as follows:

*Deadline for Notice of Intent to Apply:* August 11, 2016.

(b) On page 44753, in the left-hand column, revise lines 35–36 to read as follows:

*Deadline for Notice of Intent to Apply:* August 11, 2016.

(c) On page 44753, in the middle column, revise lines 55–56 to read as follows:

*Deadline for Notice of Intent to Apply:* August 11, 2016.

(d) On page 44753, in the right-hand column, revise lines 38–39 to read as follows:

*Deadline for Intergovernmental Review:* November 7, 2016.

*Program Authority:* Fund for the Improvement of Education (FIE), title V, part D, subpart 1, sections 5411 through 5413 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (20 U.S.C. 7243–7243b).

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Nadya Chinoy Dabby,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2016–18069 Filed 7–29–16; 8:45 am]

**BILLING CODE 4000–01–P**

**DEPARTMENT OF ENERGY****[[Certification Notice—242]****Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act**

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of filing.

**SUMMARY:** On July 18, 2016, Oregon Clean Energy, LLC, as owner and operator of a new combined cycle natural gas fired electric generating powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to § 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60, 61. FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**. 42 U.S.C. 8311(d) and 10 CFR 501.61(c).

**ADDRESSES:** Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Christopher Lawrence at (202) 586–5260.

**SUPPLEMENTARY INFORMATION:** Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to FUA in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. 42 U.S.C. 8311.

The following owner of a proposed new combined cycle natural gas fired electric generating powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

*Owner:* Oregon Clean Energy, LLC,  
*Capacity:* 960 megawatts (MW)

*Plant Location:* City of Oregon, Lucas County, Ohio.

*In-Service Date:* Approximately May 1, 2017.

Issued in Washington, DC on July 26, 2016.

**Christopher Lawrence**

*Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2016–18119 Filed 7–29–16; 8:45 am]

**BILLING CODE 6450–01–P**

**DEPARTMENT OF ENERGY****U.S. Energy Information Administration****Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery**

**AGENCY:** U.S. Energy Information Administration (EIA), Department of Energy.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, EIA invites the general public to comment on the following proposed Generic Information Collection Request (Generic ICR): “Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery” for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). This notice announces EIA’s intent to submit this proposed collection to the Office of Management and Budget (OMB) for approval.

**DATES:** Consideration will be given to all comments received by September 30, 2016. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

**ADDRESSES:** Written comments may be sent to Jacob Bournazian, Energy Information Administration, 1000 Independence Avenue SW., Washington, DC 20585 or by fax at 202–586–0552 or by email at [jacob.bournazian@eia.gov](mailto:jacob.bournazian@eia.gov).

Comments submitted in response to this notice may be made available to the public through relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment; your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Please note that responses to

this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the information collection supporting statement should be directed to Jacob Bournazian, Energy Information Administration, 1000 Independence Avenue SW., Washington, DC 20585, phone: 202-586-5562, email: [jacob.bournazian@eia.gov](mailto:jacob.bournazian@eia.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Abstract:* The proposed information collection activity provides a means to collect qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery.

By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations. This feedback also provides an early warning of issues with service, or focuses attention on areas where communication, training or changes in operations might improve the accuracy of data reported on survey instruments or the delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, understanding of questions and terminology used in survey instruments, perceptions on data confidentiality and security, appropriateness and relevancy of information, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the agency's services will be unavailable.

The agency will only submit a collection for approval under this

generic clearance if it meets the following conditions:

The collections are voluntary;

The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;

The collections are non-controversial and do not raise issues of concern to other Federal agencies;

Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;

Personally identifiable information (PII) is collected only to the extent necessary for initially contacting respondents and is not retained;

Information gathered is intended to be used only internally for general service improvement, the design, modification, and evaluation of survey instruments, modes of data collection, and program management purposes. It is not intended for release outside of the agency (if released, the agency must indicate the qualitative nature of the information);

Information gathered will not be used for the purpose of substantially informing influential policy decisions; and the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study. The information gathered will only generate qualitative type of information.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic

mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

*Current Actions:* New collection of information.

*Type of Review:* New Collection.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

*Estimated Number of Respondents:* Below is a preliminary estimate of the aggregate number of respondents and burden hours for this generic clearance.

*Average Expected Annual Number of Activities:* 50.

*Average Number of Respondents per Activity:* 10,000.

*Number of Responses:* 150,000.

*Frequency of Response:* Once per request.

*Average Minutes per Response:* 6.

*Burden Hours:* 15,000.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to

transmit or otherwise disclose the information. All written comments will be available for public inspection at [www.Regulations.gov](http://www.Regulations.gov).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

**Statutory Authority:** Executive Order (E.O.) 13571, Streamlining Service Delivery and Improving Customer Service.

Issued in Washington, DC on July 26, 2016.

**Nanda Srinivasan,**

*Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.*

[FR Doc. 2016-18120 Filed 7-29-16; 8:45 am]

**BILLING CODE 6450-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HO-OEI-2015-0200; FRL-9950-06-OEI]

### Privacy Act; System of Records: Establishment of New Passport Expiration Notification System (PENS)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of International and Tribal Affairs is giving notice that it proposes to create a new system of records for the Passport Expiration Notification System (PENS). This system of records contains personally identifiable information (PII) collected from no-fee passports for the purpose of tracking the status of government passports. The information maintained in the system will be the passport holder's name, place of birth, passport number and passport issue and expiration dates.

**EFFECTIVE DATES:** Persons wishing to comment on this system of records notice must do so by [40 days after publication in the **Federal Register**].

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA-HQ-OEI-2015-0200, by one of the following methods:

*www.regulations.gov* : Follow the online instructions for submitting comments.

*Email:* [oei.docket@epa.gov](mailto:oei.docket@epa.gov).

*Fax:* 202-566-1752.

*Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., Washington, DC 20460.

**Hand Delivery:** OEI Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OEI-2015-0200.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov). The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, and form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the OEI Docket, EPA/DC, WJC West Building, Room 3334, and 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays.

The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1745.

#### FOR FURTHER INFORMATION CONTACT:

Pamela Younger, Office of Management and International Services, Office of International and Tribal Affairs, 1300 Pennsylvania Ave. NW., 20004, telephone number: 202-564-6631; fax number: 202-565-2427; email address: [rhones-younger.pamela@epa.gov](mailto:rhones-younger.pamela@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### General Information

The U.S. Environmental Protection Agency (EPA) plans to create a Privacy Act system of records for the Passport Expiration Notification System (PENS). The information collected in this system will be used for the purpose of requesting and obtaining country clearances for EPA staff traveling to foreign countries to conduct official government business. The information maintained in the system will be the passport holder's name, place of birth, passport number and passport issue and expiration dates.

The information is accessed through an electronic means which has its own authentication process established by OEI. Only certified Passport Agents in the OITA Travel Office, and in Region 5 and the OITA Database Administrator will have access to the information contained in the database. No-fee Passports containing personal information are kept in a locked filing cabinet. Physical access to the filing cabinet is limited to authorized personnel employees with office keys.

Dated: June 22, 2016.

**Ann Dunkin,**

*Chief Information Officer.*

##### EPA-72

##### SYSTEM NAME:

Passport Expiration Notification System (PENS)

##### SYSTEM LOCATION:

US EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EPA International Travelers who apply for a no-fee passport for the purpose of conducting official government business in foreign countries.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

The passport holder's name, place of birth, passport number and issue and expiration dates.



**AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):**

E.O. 11295 22 U.S.C. 211(a); 22 CFR 51.22(b).

**PURPOSE(S):**

The primary purpose of this system is to track the status of no-fee passports, including the issuance date, expiration date, and current location and to request and obtain country clearances for EPA staff traveling to foreign countries to conduct official government business.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF GENERAL ROUTINE USES APPLICABLE TO MORE THAN ONE SYSTEM AND INCLUDES:**

<https://www.federalregister.gov/articles/2008/01/14/E8-445/amendment-to-generalroutine-uses>

**USERS, AND THE PURPOSES OF SUCH USES: GENERAL ROUTINE USES**

A., C., E., J. and L apply to the system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Electronic records are maintained in an electronic format. Passports are maintained in their physical format in a locked filing cabinet, in a locked room.

**RETRIEVABILITY:**

Records are retrieved by all or a part of the person's name, place of birth, and/or passport number.

**SAFEGUARDS:**

Computer-stored information is protected in accordance with the Agency's security requirements. Access to the information in the system is limited to authorized Agency personnel who administer the program. No external access to the system is allowed. Paper files are kept in a locked filing cabinet in a locked room. Only accessed by three employees.

**RETENTION AND DISPOSAL:**

EPA Records Schedule 1010 NARA Disposal Authority: DAA-0412-2012-0007-0003. Closed and returned to the Department of State when employee separates, retires, transfers to a new agency, or job duties no longer require international travel.

**SYSTEM MANAGER(S) AND ADDRESS:**

PENS Database Manager, Office of Management and International Services, Office of International and Tribal Affairs, (MD-2680R) 1200 Pennsylvania Ave. NW., Washington, DC 20460.

**NOTIFICATION PROCEDURE:**

Any individual who wants to know whether this system of records contains

a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the EPA FOIA Office, Attn: Privacy Act Officer, MC 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

**RECORD ACCESS PROCEDURE:**

Request for access must be made in accordance with the procedures described in EPA's Privacy Act regulations at 40 CFR part 16. Requesters will be required to provide adequate identification, such as a driver's license, employee identification or other identifying document.

**CONTESTING RECORDS PROCEDURES:**

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

**RECORD SOURCE CATEGORIES:**

Individual Passport applicants U.S. Department of State.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

None.

[FR Doc. 2016-18136 Filed 7-29-16; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION**

[OMB 3060-0853]

**Information Collection Being Reviewed by the Federal Communications Commission**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the

information llected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before September 30, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele at (202) 418-2991.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0853.

*Title:* Certification by Administrative Authority to Billed Entity Compliance with the Children's Internet Protection Act Form, FCC Form 479; Receipt of Service Confirmation and Certification of Compliance with the Children's Internet Protection Act Form, FCC Form 486; and Funding Commitment Adjustment Request Form, FCC Form 500.

*Form Numbers:* FCC Forms 479, 486 and 500.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents and Responses:* 63,700 respondents, 58,575 responses.

*Estimated Time per Response:* 1 hour for FCC Form 479, 1 hour for FCC Form 486, 1 hour for FCC Form 500, and .75 hours for maintaining and updating the Internet Safety Policy.

*Frequency of Response:* On occasion and annual reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151-154, 201-205, 218-220, 254, 303(r), 403, and 405.

*Total Annual Burden:* 58,575 hours.

*Total Annual Cost:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no assurance of confidentiality provided to respondents concerning this information collection. However, respondents may request materials or information submitted to the Commission or to the Administrator be withheld from public inspection under 47 C.F.R 0.459 of the FCC's rules.

*Needs and Uses:* The Commission seeks to revise OMB 3060-0853 to conform the FCC Forms 479, 486 and 500 to changes implemented in the *Order and FNPRM (E-rate Modernization Order)* (WC Docket No. 13-184, FCC 14-99; 79 FR 49160, August 19, 2014). The FCC Form 486 is being transitioned to an online platform for applicants that seek universal service support for funding year 2016 and later. Applicants needing to file a FCC Form 486 for a funding year earlier than funding year 2016 will need to use the current FCC Form 486 which is an electronic or paper filing. The FCC Form 500 will also be transitioned to an online platform.

The Commission will submit this information collection to OMB during this comment period to obtain the full three-year clearance from them. The purpose of this information is to ensure that schools and libraries that are eligible to receive discounted Internet Access services (Category One), and Broadband Internal Connections, Managed Internal Broadband Services, and Basic Maintenance of Broadband Internal Connections (Basic Maintenance) (known together as Category Two Services) have in place Internet safety policies. Schools and libraries receiving these services must certify, by completing a FCC Form 486 (Receipt of Service Confirmation and Certification of Compliance with the Children's Internet Protection Act), that respondents are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure. Also, respondents who received a Funding Commitment Decision Letter indicating services eligible for universal service funding must file FCC Form 486 to indicate their service start date and to start the payment process. In addition, all members of a consortium must submit signed certifications to the Billed Entity of their consortium using a FCC Form 479; Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act, in language consistent with the certifications adopted for the FCC Form 486. Consortia must, in turn,

certify collection of the FCC Forms 479 on the FCC Form 486. FCC Form 500 is used by E-rate participants to make adjustments to previously filed forms, such as changing the contract expiration date filed with the FCC Form 471, changing the funding year service start date filed with the FCC Form 486, cancelling or reducing the amount of funding commitments, requesting extensions of the deadline for non-recurring services, and notifying USAC of equipment transfers. All of the requirements contained herein are necessary to implement the congressional mandate for universal service.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison Officer, Office of Secretary.*

[FR Doc. 2016-18079 Filed 7-29-16; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0398]

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it

displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before August 31, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov); and to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov). Include in the comments the OMB control number as shown in the "Supplementary Information" section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418-2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

#### SUPPLEMENTARY INFORMATION:

*OMB Control Number:* 3060-0398.

*Title:* Sections 2.948, 2.949 and 15.117(g)(2)—Equipment Authorization Measurement Standards.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 630 respondents; 371 responses.

*Estimated Time per Response:* 2 hours-30 hours.

*Frequency of Response:* On occasion, one-time and every two year reporting requirements, recordkeeping requirement and third party disclosure requirement.

**Obligation to Respond:** Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 4(i), 302, 303(c), 303(f), 303(g) and 303(r), and 309(a).

**Total Annual Burden:** 3,612 hours.

**Total Annual Cost:** No Cost.

**Privacy Impact Assessment:** No impact(s).

**Nature and Extent of Confidentiality:** There is a minimal exemption from the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4) and 47 CFR 0.459(d) of the Commission's rules that is granted for trade secrets, which may be submitted to the Commission as part of the documentation of the test results. No other assurances of confidentiality are provided to respondents.

**Needs and Uses:** The Commission will submit this information collection after this 60 day comment period to obtain the full three-year clearance from the Office of Management and Budget (OMB).

#### Description of Measurement Facilities

The Commission established uniform technical standards for various radio-frequency equipment operating under the guidelines established in the FCC rules, which include smartphones, personal computers, garage door openers, baby monitors, etc. In order to ensure that technical standards are applied uniformly, the Commission requires testing facilities and manufacturers to follow the standardized measurement procedures and practices:

(a) 47 CFR part 2 of the Commission's rules requires each Electro-Magnetic Compatibility (EMC) testing facility that performs equipment testing in support of any request for equipment authorization to be accredited by Commission-approved accrediting bodies.

(b) A testing laboratory that is accredited by a Commission-approved accrediting body is required to file a test site description with the accreditation body for review as part of the accreditation assessment. This information will document that the EMC testing facility complies with the testing standards used to make the measurements that support any request for equipment authorization.

(c) The EMC testing facility must provide updated documentation to the accreditation bodies if there are changes in the measurement facility or certify at least every two years that the facility's equipment and test set-up have not changed.

(d) The accreditation body will provide the Commission with specific

summary information about each testing laboratory that it has accredited. The Commission will maintain a list of accredited laboratories that it has recognized.

The Commission or a Telecommunications certification body uses the information from the test sites and the supporting documentation, which accompany all requests for equipment authorization:

(a) To ensure that the data are valid and that proper testing procedures are used;

(b) To ensure that potential interference to radio communications is controlled; and

(c) To investigate complaints of harmful interference or to verify the manufacturer's compliance with Section 47 CFR 2.948 of the Commission's rules.

#### Accreditation Bodies

47 CFR Section 2.949 of the Commission's rules sets forth the requirements for accreditation bodies seeking recognition from the FCC as a laboratory accreditation body. Accreditation bodies seeking such recognition from the Commission must file a report of their qualifications with the Office of Engineering and Technology (OET). They are only required to file this information once.

#### Other Information

In addition, the referenced 47 CFR part 15 rules (47 CFR 15.117(g)(2)) require that certain equipment manufacturers file information concerning the testing of TV receivers, which tune to UHF channels, to show that the UHF channels provide approximately the same degree of tuning accuracy with approximately the same expenditure of time and effort.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison Officer, Office of Secretary.*

[FR Doc. 2016-18077 Filed 7-29-16; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0221]

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before September 30, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

#### SUPPLEMENTARY INFORMATION:

*OMB Control No.:* 3060-0221.

*Title:* Section 90.155, Time in Which Station Must Be Placed in Operation.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, and State, Local or Tribal Government.

*Number of Respondents and Responses:* 115 respondents; 723 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement.

**Obligation to Respond:** Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154(i), 161, 303(r), 303(g), 332(c)(7), unless otherwise noted.

**Total Annual Burden:** 723 hours.

**Annual Cost Burden:** No cost.

**Privacy Act Impact Assessment:** No impact(s).

**Nature and Extent of Confidentiality:** There is no need for confidentiality with is collection of information.

**Needs and Uses:** Section 90.155 provides that a period longer than 12 months may be granted to local government entities to place their stations in operation on a case-by-case basis upon a showing of need. This rule provides flexibility to state and local governments. An application for extension of time to commence service may be made on FCC Form 601. Extensions of time must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to commence service is due to causes beyond its control.

In 1995, via a Report and Order in PR Docket No. 93–61; FCC 95–41, published at 60 FR 15248, the Commission established construction deadlines for Location and Monitoring Service (LMS) licensees in the market-licensed multilateration LMS services. On July 8, 2004, the Commission adopted a Report and Order under WT Docket Nos. 02–381, 01–14, and 03–202; FCC 04–166, published at 69 FR 75144, that amended § 90.155 to provide holders of multilateration location service authorizations with five- and ten-year benchmarks to place in operation their base stations that utilize multilateration technology to provide multilateration location service to one-third of the Economic Area's (EA's) population within five years of initial license grant, and two-thirds of the population within ten years. At the five- and ten-year benchmarks, licensees are required to file a map and FCC Form 601 showing compliance with the coverage requirements pursuant to § 1.946 of the Commission's rules.

On January 31, 2007, via an Order on Reconsideration, and Memorandum Opinion and Order, under DA 07–479, the FCC granted two to three additional years to meet the five-year construction requirement for certain multilateration Location and Monitoring Service Economic Area licenses, and extended the 10-year requirement for such licenses two years.

These requirements will be used by Commission personnel to evaluate whether or not certain licensees are providing substantial service as a means

of complying with their construction requirements, or have demonstrated that an extended period of time for construction is warranted.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2016–18078 Filed 7–29–16; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

### Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before August 31, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov); and to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov). Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <<http://www.reginfo.gov/public/do/PRAMain>>, (2) look for the section of the Web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

#### SUPPLEMENTARY INFORMATION:

**OMB Control Number:** 3060–XXXX.

**Title:** Connect America Fund-Alternative Connect America Cost Model Support.

**Form Number:** N/A.

**Type of Review:** New collection.

**Respondents:** Business or other for-profit.

**Number of Respondents and Responses:** 2,010 unique respondents; 2,090 responses.

**Estimated Time per Response:** 0.5 hours–2 hours.

**Frequency of Response:** On occasion and annual reporting requirements, one-time reporting requirement and recordkeeping requirement.

**Obligation to Respond:** Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

**Total Annual Burden:** 1,780 hours.

**Total Annual Cost:** No Cost.

**Privacy Act Impact Assessment:** No impact(s).

**Nature and Extent of Confidentiality:** We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data

except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

*Needs and Uses:* The Commission is requesting approval for this new collection. In March 2016, the Commission adopted an order reforming its universal service support program in areas served by rate-of-return carriers. Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, WC Docket Nos. 10–90, 14–58, 07–135, 05–337, 03–109; CC Docket Nos. 01–92, 96–45, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16–33 (Rate-of-Return Order).

The Commission adopted a voluntary path for rate-of-return carriers to receive model-based universal service support in exchange for making a commitment to deploy broadband-capable networks meeting certain service obligation to a pre-determined number of eligible locations by state. The Commission addressed the requirement that carriers electing model-based support must notify the Commission of that election and their commitment to satisfy the specific service obligations associated with the amount of model support. In addition, the Commission adopted reforms to the universal service mechanisms used to determine support for rate-of-return carriers not electing model-based support. Among other such reforms, the Commission adopted an operating expense limitation to improve carriers' incentives to be prudent and efficient in their expenditures, a capital investment allowance to better target support to those areas with less broadband deployment, and broadband deployment obligations to promote "accountability from companies receiving support to ensure that public investment are used wisely to deliver intended results." This information collection addresses the new burdens associated with those reforms.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2016–18094 Filed 7–29–16; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX and 3060–XXXX]

### Information Collections Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before September 30, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

#### SUPPLEMENTARY INFORMATION:

*OMB Control Number:* 3060–XXXX.

*Title:* Inmate Calling Services Data Collection, One-Time Data Collection.  
*Form Number:* FCC Form 2300.  
*Type of Review:* New collection.  
*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 15 respondents; 15 responses.

*Estimated Time per Response:* 80 hours.

*Frequency of Response:* One-time reporting requirement.

*Obligation to Respond:* Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 1, 4(i), 4(j), 201, 276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201, 276 and 303(r).

*Total Annual Burden:* 1,200 hours.

*Total Annual Cost:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* The Commission anticipates providing confidential treatment for proprietary information submitted by inmate calling service (ICS) providers. Parties that comply with the terms of a protective order for the proceeding will have an opportunity to comment on the data.

*Needs and Uses:* Section 201 of the Communications Act of 1934 Act (Act), as amended, 47 U.S.C. 201, requires that ICS providers' interstate rates and practices be just and reasonable. Section 276 of the Act, 47 U.S.C. 276, requires that payphone service providers (including those, such as ICS providers, that serve correctional institutions) be fairly compensated. The Commission's Second Report and Order and Third Further Notice of Proposed Rulemaking (FNPRM) requires that all ICS providers comply with a one-time mandatory data collection. ICS providers must submit data on the costs of providing—and the demand for—interstate, international, and intrastate ICS. The data collection requires ICS providers to submit data on ICS calls, various ICS costs, company and contract information, information about facilities served, ICS revenues, ancillary fees, and mandatory taxes and fees. ICS providers are also required to apportion direct costs for each cost category and to explain how joint and common costs are apportioned among the facilities they serve and the services they provide. The data will be used to enable the Commission to assess the costs related to ICS and ensure that ICS rates and fees related to ICS rates remain just, reasonable, and fair, as required by sections 201 and 276 of the Act.

The Commission's Wireline Bureau staff will develop a standardized template for the submission of data and

provide instructions to simplify compliance with and reduce the burdens of the data collection. The template will also include filing instructions and text fields for respondents to use to explain portions of their filings, as needed. *See* FCC Form 2300. Providers are encouraged to file their data electronically via the Commission's Electronic Comment Filing System (ECFS).

*OMB Control Number:* 3060-XXXX.

*Title:* Inmate Calling Services Data Collection; Annual Reporting, Certification, and Consumer Disclosure Requirements.

*Form Number:* FCC Form 2301.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 15 respondents; 15 responses.

*Estimated Time per Response:* 5 hours—105 hours.

*Frequency of Response:* Annual reporting and certification requirements; third party disclosure requirement.

*Obligation to Respond:* Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 1, 4(i), 4(j), 201, 225, 276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201, 225, 276 and 303(r).

*Total Annual Burden:* 750 hours.

*Total Annual Cost:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* The Commission anticipates providing confidential treatment for proprietary information submitted by providers of inmate calling services (ICS). Parties that comply with the terms of a protective order for the proceeding will have an opportunity to comment on the data.

*Needs and Uses:* Section 201 of the Communications Act of 1934 Act (Act), as amended, 47 U.S.C. 201, requires that ICS providers' rates and practices be just and reasonable. Section 276 of the Act, 47 U.S.C. 276, requires that payphone service providers (including those that serve correctional institutions such as ICS providers) be fairly compensated. The Commission's Second Report and Order and Third Further Notice of Proposed Rulemaking (*Second Report and Order*), WC Docket No., FCC 15–136, requires that ICS providers file annual reports with the Commission, including certifications that the reported data are complete and accurate. The annual reporting and certification rules require ICS providers to file, among other things: Data regarding their ICS rates and minutes of use by facility and

size of facility; current ancillary service charge amounts and the instances of use of each; and the monthly amount of any site commission payments. The Commission also requires an officer of each ICS provider annually to certify the accuracy of the data submitted and the provider's compliance with the *Second Report and Order*. The consumer disclosure rule requires ICS providers to inform customers of their rates and charges. The data will assist the Commission in, among other things, ensuring compliance with the *Second Report and Order* and monitoring the effectiveness of the ICS reforms adopted therein. The data will be used to enable the Commission to assess the costs related to ICS and ensure that ICS rates and ancillary service charges related to ICS rates remain just, reasonable, and fair, as required by sections 201 and 276 of the Act.

The Commission's Wireline Bureau staff will develop a standardized template for the submission of data and provide instructions to simplify compliance with and reduce the burdens of the data collection. The template will also include filing instructions and text fields for respondents to use to explain portions of their filings, as needed. *See* FCC Form 2301. Providers are encouraged to file their data electronically via the Commission's Electronic Comment Filing System (ECFS).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2016–18095 Filed 7–29–16; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Termination; 10447 The Farmers Bank of Lynchburg, Lynchburg, Tennessee

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10447—The Farmers Bank of Lynchburg, Lynchburg, Tennessee (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of The Farmers Bank of Lynchburg (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary;

including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective August 1, 2016 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2016–18129 Filed 7–29–16; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to all Interested Parties of the Termination of the Receivership of 10123, Southern Colorado National Bank Pueblo, Colorado

NOTICE IS HEREBY GIVEN that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Southern Colorado National Bank, Pueblo, Colorado ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Southern Colorado National Bank on October 2, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 27, 2016.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2016–18181 Filed 7–29–16; 8:45 am]

**BILLING CODE 6714-01-P**

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198-0001:

1. *HYS Investments, LLC*, Topeka, Kansas; to acquire additional shares of BOTS, Inc. parent of VisionBank, all of Topeka, Kansas.

Board of Governors of the Federal Reserve System, July 26, 2016.

**Michele T. Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2016-18066 Filed 7-29-16; 8:45 am]

**BILLING CODE 6210-01-P**

**FEDERAL RESERVE SYSTEM****Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 17, 2016.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521. Comments can also be sent electronically to

*Comments.applications@phil.frb.org:*

1. *Firetree, Ltd., Williamsport, Pennsylvania, individually*, to retain shares of Woodlands Financial Services Company, and thereby indirectly retain shares of Woodlands Bank, both of Williamsport, Pennsylvania.

Board of Governors of the Federal Reserve System, July 26, 2016.

**Michele T. Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2016-18065 Filed 7-29-16; 8:45 am]

**BILLING CODE 6210-01-P**

**FEDERAL RESERVE SYSTEM****Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities**

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 2016.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521. Comments can also be sent electronically to

*Comments.applications@phil.frb.org:*

1. *Prudential Bancorp, Inc., Philadelphia, Pennsylvania*; to acquire Polonia Bancorp, Inc., and thereby indirectly acquire Polonia Bank, both of Huntingdon Valley, Pennsylvania and thereby engage in operating a savings association pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 26, 2016.

**Michele T. Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2016-18067 Filed 7-29-16; 8:45 am]

**BILLING CODE 6210-01-P**

**FEDERAL RESERVE SYSTEM****Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 16, 2016.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Lee Equity Partners, LLC, Lee Equity Partners Realization Fund, L.P., Lee Equity Strategic Partners Realization Fund, L.P., Lee Equity Partners Realization Fund GP, LLC, and LEP Carlile Holdings, LLC, all of New York, New York; AlpInvest Partners B.V., AlpInvest Partners US Secondary Investments 2015 I C.V., AlpInvest Partners Secondary Investments 2015 I B.V., AlpInvest Partners US Secondary*



*Investments 2014 II C.V., AlpInvest Partners 2014 II B.V., AM 2014 Secondary C.V., AlpInvest Mich B.V., AM 2015 Secondary C.V., AlpInvest Partners US Secondary Investments 2015 II C.V., AlpInvest Partners Secondary Investments 2015 II B.V., AlpInvest Secondaries Fund (Euro) V C.V., AlpInvest SF V. B.V., AlpInvest Secondaries Fund V C.V., AlpInvest Partners US Secondary Investments 2014 I C.V., AlpInvest Partners 2014 I B.V., GGG US Secondary C.V., AlpInvest GGG B.V., GGG US Secondary 2015 C.V., AP H Secondaries C.V., AP H Secondaries B.V., AP Fondo Secondaries C.V., AlpInvest Fondo B.V., AlpInvest GA Secondary C.V., AlpInvest GA B.V., AlpInvest A2 Investment Fund C.V., AlpInvest United B.V., AlpInvest A2 Investment Fund II C.V., Alp Holdings Ltd., Alp Intermediate Holdings 2 L.P., Alp Intermediate Holdings I Ltd., Alp Lower Holdings Ltd., Alp Holdings Cooperatief U.A., and AP B.V., all of Amsterdam, The Netherlands; and AlpInvest Partners US Secondary Investments 2014 I, LLC, AlpInvest US Holdings, LLC, The Carlyle Group L.P., Carlyle Group Management L.L.C., Carlyle Holdings III GP Management L.L.C., Carlyle Holdings III GP L.P., Carlyle Holdings III GP Sub L.L.C., Carlyle Holdings III L.P., TC Group Cayman, L.P., all of New York, New York; HarbourVest Partners, LLC, HarbourVest Partners L.P., Dover Street VIII L.P., Dover VIII Associates L.P., Dover VIII Associates LLC, HarbourVest Global Annual Private Equity Fund L.P., HarbourVest Global Associates L.P., HarbourVest Global Associates LLC, HarbourVest 2015 Global Fund L.P., HarbourVest 2015 Global Associates L.P., HarbourVest 2015 Global Associates LLC, HarbourVest Partners X Secondary L.P., HarbourVest X Associates LLC, HarbourVest Partners IX-Credit Opportunities Fund L.P., HarbourVest IX Credit Opportunities Associates L.P., HarbourVest IX-Credit Opportunities Associates LLC, HIPEP VII Secondary L.P., HarbourVest Partners X Venture Fund L.P., HarbourVest Partners X Buyout Fund L.P., HarbourVest Partners X AIF Venture L.P., HarbourVest Partners X AIF Buyout L.P., HIPEP VII Partnership Fund L.P., HIPEP VII (AIF) Partnership Fund L.P., HIPEP VII Asia Pacific Fund L.P., HIPEP VII (AIF) Asia Pacific Fund L.P., HIPEP VII Emerging Markets Fund L.P., HIPEP VII Europe Fund L.P., HarbourVest X Associates LLC and HIPEP VII Associates LLC, all of Boston, Massachusetts; and other affiliates; to acquire shares of Carlisle Bancshares, Inc., Fort Worth, Texas, and thereby,*

indirectly acquire shares of, NorthStar Bank of Texas, Denton, Texas, and NorthStar Bank of Colorado, Denver, Colorado.

B. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to

[Comments.applications@stls.frb.org](mailto:Comments.applications@stls.frb.org);

1. John W. Brannan, Jr., individually and as trustee of the Bank of Prescott Employee Stock Ownership Plan, both of Prescott, Arkansas; and as a member of a family control group consisting of Janet P. McAdams; James E. Franks and Linda B. Franks, as trustees of the James E. Franks and Linda B. Franks revocable trust, all of Hot Springs, Arkansas; John Matthew Brannan; Susan Brannan Welch; Lindsay Frank Weeks; Patricia C. Thompson; and Elizabeth Thompson Horowitz, to acquire additional shares of Prescott Bancshares, Inc., Prescott, Arkansas, and thereby indirectly acquire shares of Bank of Prescott, Prescott, Arkansas.

Board of Governors of the Federal Reserve System, July 27, 2016.

**Michele T. Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2016–18099 Filed 7–29–16; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS–1650–N]

**RIN 0938–AS76**

### Medicare Program; FY 2017 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs) (which include freestanding IPFs and psychiatric units of an acute care hospital or critical access hospital). These changes are applicable to IPF discharges occurring during the fiscal year (FY) beginning October 1, 2016 through September 30, 2017 (FY 2017).

**DATES:** *Effective:* The updated IPF prospective payment rates are effective for discharges occurring on or after October 1, 2016 through September 30, 2017.

### FOR FURTHER INFORMATION CONTACT:

Katherine Lucas (410) 786–7723 or Jana Lindquist (410) 786–9374 for general information.

Theresa Bean (410) 786–2287 or James Hardesty (410) 786–2629 for information regarding the regulatory impact analysis.

### SUPPLEMENTARY INFORMATION:

#### Availability of Certain Tables Exclusively Through the Internet on the CMS Web Site

In the past, tables setting forth the Wage Index for Urban Areas Based on Core-Based Statistical Area (CBSA) Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas were published in the **Federal Register** as an Addendum to the annual IPF Prospective Payment System (PPS) rulemaking (that is, the IPF PPS proposed and final rules or notice). However, since FY 2015, these wage index tables are no longer published in the **Federal Register**. Instead, these tables are available exclusively through the Internet, on the CMS Web site at <https://www.cms.gov/Medicare/IPFPPS/WageIndex.html>.

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

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## Acronyms

Because of the many terms to which we refer by acronym in this notice, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

- ADC Average Daily Census  
 BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Pub. L. 106–113)  
 BLS Bureau of Labor Statistics  
 CAH Critical Access Hospital  
 CBSA Core-Based Statistical Area  
 CCR Cost-to-Charge Ratio  
 CPI Consumer Price Index  
 CPI–U Consumer Price Index for all Urban Consumers  
 CY Calendar Year  
 DRGs Diagnosis-Related Groups  
 ECT Electroconvulsive Therapy  
 ESRD End State Renal Disease  
 FR Federal Register  
 FTE Full-time equivalent  
 FY Federal Fiscal Year (October 1 through September 30)  
 GDP Gross Domestic Product  
 GME Graduate Medical Education  
 HCRIS Healthcare Cost Report Information System  
 ICD–9–CM International Classification of Diseases, 9th Revision, Clinical Modification

- ICD–10–CM International Classification of Diseases, 10th Revision, Clinical Modification  
 ICD–10–PCS International Classification of Diseases, 10th Revision, Procedure Coding System  
 IGI IHS Global Insight, Inc.  
 IPF Inpatient Psychiatric Facility  
 IPFQR Inpatient Psychiatric Facilities Quality Reporting  
 IPPS Inpatient Prospective Payment System  
 IRFs Inpatient Rehabilitation Facilities  
 LOS Length of Stay  
 LRS Labor-related Share  
 LTCHs Long-Term Care Hospitals  
 MAC Medicare Administrative Contractor  
 MedPAR Medicare Provider Analysis and Review File  
 MFP Multifactor Productivity  
 MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003  
 MSA Metropolitan Statistical Area  
 NDAA National Defense Authorization Act  
 NQF National Quality Forum  
 OMB Office of Management and Budget  
 OPSS Outpatient Prospective Payment System  
 POS Provider of Services  
 PPS Prospective Payment System  
 RFA Regulatory Flexibility Act  
 RPL Rehabilitation, Psychiatric, and Long-Term Care  
 RY Rate Year (July 1 through June 30)  
 SBA Small Business Administration  
 SCHIP State Children's Health Insurance Program  
 SNF Skilled Nursing Facility  
 TEFRA Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248)

## I. Executive Summary

### A. Purpose

This notice updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs) for discharges occurring during the fiscal year (FY) beginning October 1, 2016 through September 30, 2017.

### B. Summary of the Major Provisions

In this notice, we are updating the IPF Prospective Payment System (PPS), as specified in 42 CFR 412.428. The updates include the following:

- Effective for the FY 2016 IPF PPS update, we adopted a 2012-based IPF market basket. For FY 2017, we adjusted the 2012-based IPF market basket update (2.8 percent) by a reduction for economy-wide productivity (0.3 percentage point) as required by section 1886(s)(2)(A)(i) of the Social Security Act (the Act). We further reduced the 2012-based IPF market basket update by 0.2 percentage point as required by section 1886(s)(2)(A)(ii) of the Act, resulting in an estimated IPF payment rate update of 2.3 percent for FY 2017.
- The 2012-based IPF market basket resulted in a labor-related share of 75.1 percent for FY 2017.

- We updated the IPF PPS per diem rate from \$743.73 to \$761.37. Providers that failed to report quality data for FY 2017 payment will receive a FY 2017 per diem rate of \$746.48.

- We updated the electroconvulsive therapy (ECT) payment per treatment from \$320.19 to \$327.78. Providers that failed to report quality data for FY 2017 payment will receive a FY 2017 ECT payment per treatment of \$321.38.

- We used the updated labor-related share of 75.1 percent (based on the 2012-based IPF market basket) and CBSA rural and urban wage indices for FY 2017, and established a wage index budget-neutrality adjustment of 1.0007.

- We updated the fixed dollar loss threshold amount from \$9,580 to \$10,120 in order to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF PPS payments.

### C. Summary of Impacts

Provision description	Total transfers
FY 2017 IPF PPS payment update.	The overall economic impact of this notice is an estimated \$100 million in increased payments to IPFs during FY 2017.

## II. Background

### A. Overview of the Legislative Requirements for the IPF PPS

Section 124 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) required the establishment and implementation of an IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary of the Department of Health and Human Services (the Secretary) develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units including an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and psychiatric units.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to distinct part psychiatric units of critical access hospitals (CAHs).

Section 3401(f) and section 10322 of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to jointly as “the Affordable Care Act”)

added subsection (s) to section 1886 of the Act.

Section 1886(s)(1) of the Act titled “Reference to Establishment and Implementation of System”, refers to section 124 of the BBRA, which relates to the establishment of the IPF PPS.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the Rate Year (RY) beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY. As noted in our previous IPF PPS final rule (the FY 2016 IPF PPS final rule), for the RY beginning in 2015 (that is, FY 2016), the current estimate of the productivity adjustment is equal to 0.5 percent.

Section 1886(s)(2)(A)(ii) of the Act requires the application of an “other adjustment” that reduces any update to an IPF PPS base rate by percentages specified in section 1886(s)(3) of the Act for the RY beginning in 2010 through the RY beginning in 2019. As noted in our FY 2016 IPF PPS final rule, for the RY beginning in 2015 (that is, FY 2016), section 1886(s)(3)(D) of the Act requires the reduction to be 0.2 percentage point.

Sections 1886(s)(4)(A) and 1886(s)(4)(B) of the Act require that for RY 2014 and every subsequent year, IPFs that fail to report required quality data shall have their annual payment rate update reduced by 2.0 percentage points. This may result in an annual update being less than 0.0 for a rate year, and may result in payment rates for the upcoming rate year being less than such payment rates for the preceding rate year. Any reduction for failure to report required quality data shall apply only with respect to the rate year involved and the Secretary shall not take into account such reduction in computing the payment amount for a subsequent rate year. More information about the IPF Quality Reporting Program is available in the April 27, 2016 FY 2017 Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System Proposed Rule (81 FR 25238 through 25244).

To implement and periodically update these provisions, we have published various proposed and final rules and notices in the **Federal Register**. For more information regarding these documents, see the CMS Web site at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html?redirect=/InpatientPsychFacilPPS/>.

### *B. Overview of the IPF PPS*

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as required by section 124 of the BBRA and codified at subpart N of part 412 of the Medicare regulations. The November 2004 IPF PPS final rule set forth the per diem federal rates for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) of the Medicare program.

The IPF PPS established the federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget-neutrality.

The federal per diem payment under the IPF PPS is comprised of the federal per diem base rate described above and certain patient- and facility-level payment adjustments that were found in the regression analysis to be associated with statistically significant per diem cost differences.

The patient-level adjustments include age, Diagnosis-Related Group (DRG) assignment, comorbidities; additionally, there are variable per diem adjustments to reflect higher per diem costs at the beginning of a patient's IPF stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost-of-living adjustment for IPFs located in Alaska and Hawaii, and an adjustment for the presence of a qualifying Emergency Department (ED).

The IPF PPS provides additional payment policies for: Outlier cases; interrupted stays; and a per treatment adjustment for patients who undergo ECT. During the IPF PPS mandatory 3-year transition period, stop-loss payments were also provided; however, since the transition ended in 2008, these payments are no longer available.

A complete discussion of the regression analysis that established the IPF PPS adjustment factors appears in

the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

Section 124 of the BBRA did not specify an annual rate update strategy for the IPF PPS and was broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

- Calculate the final federal per diem base rate to be budget-neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.
- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

In RY 2012, we proposed and finalized switching the IPF PPS payment rate update from a rate year that begins on July 1 and ends on June 30 to one that coincides with the federal fiscal year that begins October 1 and ends on September 30. In order to transition from one timeframe to another, the RY 2012 IPF PPS covered a 15-month period from July 1, 2011 through September 30, 2012. Therefore, the update cycle for FY 2016 was October 1, 2015 through September 30, 2016. For further discussion of the 15-month market basket update for RY 2012 and changing the payment rate update period to coincide with a FY period, we refer readers to the FY 2012 IPF PPS proposed rule (76 FR 4998) and the RY 2012 IPF PPS final rule (76 FR 26432).

### *C. Annual Requirements for Updating the IPF PPS*

In November 2004, we implemented the IPF PPS in a final rule that appeared in the November 15, 2004 **Federal Register** (69 FR 66922). In developing the IPF PPS, to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In that final rule, we explained the reasons for delaying an update to the adjustment factors, derived from the regression analysis, until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the

population that each IPF serves. We indicated that we did not intend to update the regression analysis and the patient-level and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (71 FR 27041). We have been performing the necessary analysis to make refinements to the IPF PPS using more current data to set the adjustment factors. We expect we will be ready to propose potential refinements in future rulemaking.

In the May 6, 2011 IPF PPS final rule (76 FR 26432), we changed the payment rate update period to a RY that coincides with a FY update. Therefore, update notices are now published in the **Federal Register** in the summer to be effective on October 1. When proposing changes in IPF payment policy, a proposed rule would be issued in the spring and the final rule in the summer in order to be effective on October 1. For further discussion on changing the IPF PPS payment rate update period to a RY that coincides with a FY, see the IPF PPS final rule published in the **Federal Register** on May 6, 2011 (76 FR 26434 through 26435). For a detailed list of updates to the IPF PPS, see 42 CFR 412.428.

Our most recent IPF PPS annual update occurred in an August 5, 2015, **Federal Register** final rule (80 FR 46652) (hereinafter referred to as the August 2015 IPF PPS final rule), which updated the IPF PPS payment rates for FY 2016. That rule updated the IPF PPS per diem payment rates that were published in the August 2014 IPF PPS final rule (79 FR 45938) in accordance with our established policies.

### III. Provisions of the Notice

#### A. Updated FY 2017 Market Basket for the IPF PPS

##### 1. Background

The input price index that was used to develop the IPF PPS was the “Excluded Hospital with Capital” market basket. This market basket was based on 1997 Medicare cost reports for Medicare participating inpatient rehabilitation facilities (IRFs), inpatient psychiatric facilities (IPFs), long-term care hospitals (LTCHs), cancer hospitals, and children’s hospitals. Although “market basket” technically describes the mix of goods and services used in providing health care at a given point in time, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies) derived from that market basket. Accordingly, the

term “market basket,” as used in this document, refers to an input price index.

Beginning with the May 2006 IPF PPS final rule (71 FR 27046 through 27054), IPF PPS payments were updated using a 2002-based rehabilitation, psychiatric, and long-term care (RPL) market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding IPFs, and LTCHs. Cancer and children’s hospitals were excluded from the RPL market basket because their payments are based entirely on reasonable costs subject to rate-of-increase limits established under the authority of section 1886(b) of the Act and not through a PPS. Also, the 2002 cost structures for cancer and children’s hospitals are noticeably different than the cost structures of freestanding IRFs, freestanding IPFs, and LTCHs. See the May 2006 IPF PPS final rule (71 FR 27046 through 27054) for a complete discussion of the 2002-based RPL market basket.

In the May 1, 2009 IPF PPS notice (74 FR 20376), we expressed our interest in exploring the possibility of creating a stand-alone IPF market basket that reflects the cost structures of only IPF providers. One available option was to combine the Medicare cost report data from freestanding IPF providers with Medicare cost report data from hospital-based IPF providers. We indicated that an examination of the Medicare cost report data comparing freestanding IPFs and hospital-based IPFs showed differences between cost levels and cost structures. At that time, we were unable to fully understand these differences even after reviewing explanatory variables such as geographic variation, case mix (including DRG, comorbidity, and age), urban or rural status, teaching status, and presence of a qualifying emergency department. As a result, we continued to research ways to reconcile the differences and solicited public comment for additional information that might help us to better understand the reasons for the variations in costs and cost structures, as indicated by the Medicare cost report data (74 FR 20376). We summarized the public comments received and our responses in the April 2010 IPF PPS notice (75 FR 23111 through 23113). Despite receiving comments from the public on this issue, we were still unable to sufficiently reconcile the observed differences in costs and cost structures between hospital-based and freestanding IPFs; and therefore, at that time we did not believe it to be appropriate to incorporate data from hospital-based IPFs with those of freestanding IPFs to create a stand-alone IPF market basket.

Beginning with the RY 2012 IPF PPS final rule (76 FR 26432), IPF PPS payments were updated using a 2008-based RPL market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding IPFs, and LTCHs. The major changes for RY 2012 included: Updating the base year from FY 2002 to FY 2008; using a more specific composite chemical price proxy; breaking the professional fees cost category into two separate categories (Labor-related and Non-labor-related); and adding two additional cost categories (Administrative and Facilities Support Services and Financial Services), which were previously included in the residual All Other Services cost categories. The RY 2012 IPF PPS proposed rule (76 FR 4998) and RY 2012 final rule (76 FR 26432) contain a complete discussion of the development of the 2008-based RPL market basket.

In the FY 2016 IPF PPS proposed rule, we proposed to create a 2012-based IPF market basket, using Medicare cost report data for both freestanding and hospital-based IPFs. After consideration of the public comments, we finalized the creation and adoption of a 2012-based IPF market basket with a modification to the Wages and Salaries and Employee Benefits cost methodologies based on public comments. We believe that the use of the 2012-based IPF market basket to update IPF PPS payments is a technical improvement as it is based on Medicare Cost Report data from both freestanding and hospital-based IPFs. Furthermore, the 2012-based IPF market basket does not include costs from either IRF or LTCH providers, which were included in the 2008-based RPL market basket. We refer readers to the FY 2016 IPF PPS final rule for a detailed discussion of the 2012-based IPF PPS Market Basket and its development (80 FR 46656 through 46679).

##### 2. FY 2017 IPF Market Basket Update

For FY 2017 (beginning October 1, 2016 and ending September 30, 2017), we use an estimate of the 2012-based IPF market basket increase factor to update the IPF PPS base payment rate. Consistent with historical practice, we estimate the market basket update for the IPF PPS based on IHS Global Insight’s forecast. IHS Global Insight, Inc. (IGI) is a nationally recognized economic and financial forecasting firm that contracts with the Centers for Medicare & Medicaid Services (CMS) to forecast the components of the market baskets and multifactor productivity (MFP). Based on IGI’s second quarter 2016 forecast with historical data

through the first quarter of 2016, the 2012-based IPF market basket increase factor for FY 2017 is 2.8 percent.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 (a RY that coincides with a FY) and each subsequent RY. For this FY 2017 IPF PPS Notice, based on IGI's second quarter 2016 forecast, the MFP adjustment for FY 2017 (the 10-year moving average of MFP for the period ending FY 2017) is projected to be 0.3 percent. We reduced the IPF market basket estimate by this 0.3 percentage point productivity adjustment, as mandated by the Act. For more information on the productivity adjustment, please see the discussion in the FY 2016 IPF PPS final rule (80 FR 46675).

In addition, for FY 2017 the 2012-based IPF PPS market basket update is further reduced by 0.2 percentage point as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act. This results in an estimated FY 2017 IPF PPS payment rate update of 2.3 percent ( $2.8 - 0.3 - 0.2 = 2.3$ ).

### 3. IPF Labor-Related Share

Due to variations in geographic wage levels and other labor-related costs, we believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index, which would apply to the labor-related portion of the Federal per diem base rate (hereafter referred to as the labor-related share).

The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

Based on our definition of the labor-related share and the cost categories in the 2012-based IPF market basket, we are continuing to include in the labor-related share the sum of the relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair, All Other: Labor-related Services, and a portion (46 percent) of the Capital-Related cost weight from the proposed 2012-based IPF market basket. The relative importance reflects the different rates of price change for these cost categories between the base year (FY 2012) and FY 2017. Using IGI's second quarter 2016 forecast for the final 2012-based IPF market basket, the IPF labor-related

share for FY 2017 is the sum of the FY 2017 relative importance of each labor-related cost category.

Please see the FY 2016 IPF PPS final rule for more information on the labor-related share and its calculation (80 FR 46675 through 46679). For FY 2017, the updated labor-related share based on IGI's second quarter 2016 forecast of the 2012-based IPF PPS market basket is 75.1 percent.

### *B. Updates to the IPF PPS Rates for FY Beginning October 1, 2016*

The IPF PPS is based on a standardized Federal per diem base rate calculated from the IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The Federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient-level and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

#### 1. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA required that we implement the IPF PPS in a budget-neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97-248) methodology had the IPF PPS not been implemented. A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

Under the IPF PPS methodology, we calculated the final Federal per diem base rate to be budget-neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

Next, we standardized the IPF PPS Federal per diem base rate to account

for the overall positive effects of the IPF PPS payment adjustment factors by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. Additional information concerning this standardization can be found in the November 2004 IPF PPS final rule (69 FR 66932) and the RY 2006 IPF PPS final rule (71 FR 27045). We then reduced the standardized Federal per diem base rate to account for the outlier policy, the stop loss provision, and anticipated behavioral changes. A complete discussion of how we calculated each component of the budget-neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the May 2006 IPF PPS final rule (71 FR 27044 through 27046). The final standardized budget-neutral Federal per diem base rate established for cost reporting periods beginning on or after January 1, 2005 was calculated to be \$575.95.

The Federal per diem base rate has been updated in accordance with applicable statutory requirements and \$412.428 through publication of annual notices or proposed and final rules. A detailed discussion on the standardized budget-neutral Federal per diem base rate and the electroconvulsive therapy (ECT) payment per treatment appears in the August 2013 IPF PPS update notice (78 FR 46738 through 46739). These documents are available on the CMS Web site at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html>.

IPFs must include a valid procedure code for ECT services provided to IPF beneficiaries in order to bill for ECT services, as described in our Medicare claims processing manual, chapter 3, section 190.7.3 (available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c03.pdf>.) There were no changes to the ECT procedure codes used on IPF claims as a result of the update to the ICD-10-PCS code set for FY 2017.

#### 2. Update of the Federal Per Diem Base Rate and Electroconvulsive Therapy Payment Per Treatment

The current (FY 2016) Federal per diem base rate is \$743.73 and the ECT payment per treatment is \$320.19. For FY 2017, we applied a payment rate update of 2.3 percent (that is, the 2012-based IPF market basket increase for FY 2017 of 2.8 percent less the productivity adjustment of 0.3 percentage point, and further reduced by the 0.2 percentage point required under section

1886(s)(3)(D) of the Act), and the wage index budget-neutrality factor of 1.0007 (as discussed in section III.D.1.e of this notice) to the FY 2016 Federal per diem base rate of \$743.73, yielding a Federal per diem base rate of \$761.37 for FY 2017. Similarly, we applied the 2.3 percent payment rate update and the 1.0007 wage index budget-neutrality factor to the FY 2016 ECT payment per treatment, yielding an ECT payment per treatment of \$327.78 for FY 2017.

Section 1886(s)(4)(A)(i) of the Act requires that, for RY 2014 and each subsequent RY, the Secretary shall reduce any annual update to a standard Federal rate for discharges occurring during the RY by 2.0 percentage points for any IPF that did not comply with the quality data submission requirements with respect to an applicable year. Therefore, we are applying a 2.0 percentage point reduction to the Federal per diem base rate and the ECT payment per treatment as follows: For IPFs that failed to submit quality reporting data under the Inpatient Psychiatric Facilities Quality Reporting (IPFQR) program, we are applying a 0.3 percent payment rate update (that is, 2.3 percent reduced by 2 percentage points in accordance with section 1886(s)(4)(A)(ii) of the Act) and the wage index budget-neutrality factor of 1.0007 to the FY 2016 Federal per diem base rate of \$743.73, yielding a Federal per diem base rate of \$746.48 for FY 2017. Similarly, for IPFs that failed to submit quality reporting data under the IPFQR program, we are applying the 0.3 percent annual payment rate update and the 1.0007 wage index budget-neutrality factor to the FY 2016 ECT payment per treatment of \$320.19, yielding an ECT payment per treatment of \$321.38 for FY 2017.

### C. Updates to the IPF PPS Patient-Level Adjustment Factors

#### 1. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 MedPAR data file, which contained 483,038 cases. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). We continue to use the existing regression-derived adjustment factors established in 2005 for FY 2017. However, we have used more recent claims data to simulate payments to set the outlier fixed dollar loss threshold amount and to assess the impact of the IPF PPS updates.

#### 2. IPF-PPS Patient-Level Adjustments

The IPF PPS includes payment adjustments for the following patient-level characteristics: Medicare Severity Diagnosis Related Groups (MS-DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

##### a. MS-DRG Assignment

We believe it is important to maintain the same diagnostic coding and DRG classification for IPFs that are used under the Inpatient Prospective Payment System (IPPS) for providing psychiatric care. For this reason, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set (ICD-9-CM) and DRG patient classification system (CMS DRGs) that were utilized at the time under the IPPS. In the May 2008 IPF PPS notice (73 FR 25709), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS-DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). In the 2008 IPF PPS notice (73 FR 25716), we provided a crosswalk to reflect changes that were made under the IPF PPS to adopt the new MS-DRGs. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS-DRG adjustment categories, we refer readers to the May 2008 IPF PPS notice (73 FR 25714).

The IPF PPS includes payment adjustments for designated psychiatric DRGs assigned to the claim based on the patient's principal diagnosis. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis. Mapping the DRGs to the MS-DRGs resulted in the current 17 IPF MS-DRGs, instead of the original 15 DRGs, for which the IPF PPS provides an adjustment. For the FY 2017 update, we are not making any changes to the IPF MS-DRG adjustment factors.

In FY 2015 rulemaking (79 FR 45945 through 45947), we proposed and finalized conversions of the ICD-9-CM-based MS-DRGs to ICD-10-CM/PCS-based MS-DRGs, which were implemented on October 1, 2015. Further information on the ICD-10-CM/PCS MS-DRG conversion project can be found on the CMS ICD-10-CM Web site at <https://www.cms.gov/Medicare/>

#### Coding/ICD10/ICD-10-MS-DRG-Conversion-Project.html

For FY 2017, we will continue to make a payment adjustment for psychiatric diagnoses that group to one of the existing 17 IPF MS-DRGs listed in Addendum A. Psychiatric principal diagnoses that do not group to one of the 17 designated DRGs will still receive the Federal per diem base rate and all other applicable adjustments, but the payment would not include a DRG adjustment.

The diagnoses for each IPF MS-DRG will be updated as of October 1, 2016, using the final FY 2017 ICD-10-CM/PCS code sets. The FY 2017 IPPS Final Rule with comment period includes tables of the changes to the ICD-10-CM/PCS code sets which underlie the FY 2017 IPF MS-DRGs. Both the FY 2017 IPPS final rule and the tables of changes to the ICD-10-CM/PCS code sets which underlie the FY 2017 MS-DRGs are available on the IPPS Web site at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html>.

##### i. Code First

As discussed in the ICD-10-CM Official Guidelines for Coding and Reporting, certain conditions have both an underlying etiology and multiple body system manifestations due to the underlying etiology. For such conditions, the ICD-10-CM has a coding convention that requires the underlying condition be sequenced first followed by the manifestation. Wherever such a combination exists, there is a "use additional code" note at the etiology code, and a "code first" note at the manifestation code. These instructional notes indicate the proper sequencing order of the codes (etiology followed by manifestation). In accordance with the ICD-10-CM Official Guidelines for Coding and Reporting, when a primary (psychiatric) diagnosis code has a "code first" note, the provider would follow the instructions in the ICD-10-CM text. The submitted claim goes through the CMS processing system, which will identify the primary diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign a DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

For more information on "code first" policy, please see the November 2004 IPF PPS Final Rule (69 FR 66945). In the FY 2015 IPF PPS final rule, we provided a "code first" table for reference that highlights the same or similar manifestation codes where the "code



first” instructions apply in ICD–10–CM that were present in ICD–9–CM (79 FR 46009). There were no changes to the IPF Code First list as a result of the FY 2017 updates to the ICD–10–CM/PCS code sets.

#### b. Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain existing medical or psychiatric conditions that are expensive to treat. In the May 2011 IPF PPS final rule (76 FR 26451 through 26452), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2012 (76 FR 26451).

Comorbidities are specific patient conditions that are secondary to the patient’s principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment within a comorbidity category, but it may receive an adjustment for more than one comorbidity category. Current billing instructions for discharge claims, on or after October 1, 2015, require IPFs to enter the complete ICD–10–CM codes for up to 24 additional diagnoses if they co-exist at the time of admission, or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM “code first” instructions apply. In a “code first” situation, the submitted claim goes through the CMS processing system, which will identify the primary diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign a DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

As noted previously, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. The 17 comorbidity categories formerly defined using ICD–9–CM codes were converted to ICD–10–CM/PCS in the FY 2015 IPF PPS final rule (79 FR 45947 to 45955). The goal for converting the comorbidity categories is referred to as replication, meaning that the payment adjustment for a given patient encounter is the same after ICD–10–CM implementation as it would be if the same record had been coded in ICD–9–CM and submitted prior to ICD–10–CM/PCS implementation on October 1, 2015. All conversion efforts were made with the intent of achieving this goal. For FY 2017, we will use the comorbidity adjustments in effect in FY 2016, which are found in Addendum A to this notice. We have also updated the ICD–10–CM/PCS codes which are associated with the existing IPF PPS comorbidity categories, based upon the FY 2017 update to the ICD–10–CM/PCS code set. In accordance with the policy established in the FY 2015 IPF PPS Final Rule (79 FR 45949 through 45952), we reviewed all new FY 2017 ICD–10–CM codes to remove site unspecified codes from the new FY 2017 ICD–10–CM/PCS codes in instances where more specific codes are available. Based on our review, we are excluding new FY 2017 ICD–10–CM code D49519 (“Neoplasm of unspecified behavior of unspecified kidney”) in the Oncology Treatment comorbidity category. Please see Addendum B to this notice for a table of changes to the ICD–10–CM/PCS codes which affect FY 2017 IPF PPS comorbidity categories.

#### 3. Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (range of ages) for payment adjustments. In general, we found that the cost per day increases with age. The older age groups are more costly than the under 45 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant. For FY 2017, we will use the patient age adjustments currently in effect in FY 2016, as shown in Addendum A to this notice.

#### 4. Variable Per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the LOS increases. The variable per diem adjustments to the Federal per diem base rate account

for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF. We used a regression analysis to estimate the average differences in per diem cost among stays of different lengths. As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient’s stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section III.D.4 of this notice.

For FY 2017, we will use the variable per diem adjustment factors currently in effect as shown in Addendum A to this notice. A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

#### D. Updates to the IPF PPS Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

##### 1. Wage Index Adjustment

###### a. Background

As discussed in the May 2006 IPF PPS final rule (71 FR 27061) and in the May 2008 (73 FR 25719) and May 2009 (74 FR 20373) IPF PPS notices, in order to provide an adjustment for geographic wage levels, the labor-related portion of an IPF’s payment is adjusted using an appropriate wage index. Currently, an IPF’s geographic wage index value is determined based on the actual location of the IPF in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) and (C).

###### b. Updated Wage Index for FY 2017

Since the inception of the IPF PPS, we have used the pre-floor, pre-reclassified acute care hospital wage index in developing a wage index to be applied to IPFs because there is not an IPF-specific wage index available. We believe that IPFs compete in the same labor markets as acute care hospitals, so the pre-floor, pre-reclassified hospital wage index should reflect IPF labor costs. As discussed in the May 2006 IPF PPS final rule for FY 2007 (71 FR 27061 through 27067), under the IPF PPS, the wage index is calculated using the IPPS



wage index for the labor market area in which the IPF is located, without taking into account geographic reclassifications, floors, and other adjustments made to the wage index under the IPPS. For a complete description of these IPPS wage index adjustments, please see the CY 2013 IPPS/LTCH PPS final rule (77 FR 53365 through 53374). For FY 2017, we will continue to apply the most recent hospital wage index (the FY 2016 pre-floor, pre-reclassified hospital wage index, which is the most appropriate index as it best reflects the variation in local labor costs of IPFs in the various geographic areas) using the most recent hospital wage data (data from hospital cost reports for the cost reporting period beginning during FY 2012) without any geographic reclassifications, floors, or other adjustments. We apply the FY 2017 IPF PPS wage index to payments beginning October 1, 2016.

We apply the wage index adjustment to the labor-related portion of the federal rate, which changed from 75.2 percent in FY 2016 to 75.1 percent in FY 2017. This percentage reflects the labor-related share of the 2012-based IPF market basket for FY 2017 (see section III.A.3 of this notice).

#### c. OMB Bulletins

OMB publishes bulletins regarding Core-Based Statistical Area (CBSA) changes, including changes to CBSA numbers and titles. In the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061 through 27067), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB CBSA geographic designations in RY 2007, we did not provide a separate transition for the CBSA-based wage index since the IPF PPS was already in a transition period from TEFRA payments to PPS payments.

In the May 2008 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applies to the hospital wage index used to determine the current IPF PPS wage index and stated that we expect to continue to do the same for all the OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary (73 FR 25721). The OMB bulletins may be accessed online at [https://www.whitehouse.gov/omb/bulletins\\_default/](https://www.whitehouse.gov/omb/bulletins_default/).

In accordance with our established methodology, we have historically adopted any CBSA changes that are published in the OMB bulletin that corresponds with the hospital wage index used to determine the IPF PPS wage index. For the FY 2015 IPF wage index, we used the FY 2014 pre-floor, pre-reclassified hospital wage index to adjust the IPF PPS payments. On February 28, 2013, OMB issued OMB Bulletin No. 13–01, which established revised delineations for MSAs, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at [https://www.whitehouse.gov/omb/bulletins\\_default/](https://www.whitehouse.gov/omb/bulletins_default/). Because the FY 2014 pre-floor, pre-reclassified hospital wage index was finalized prior to the issuance of this Bulletin, the FY 2015 IPF PPS wage index, which was based on the FY 2014 pre-floor, pre-reclassified hospital wage index, did not reflect OMB's new area delineations based on the 2010 Census. According to OMB, "[t]his bulletin provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246 through 37252) and Census Bureau data." These OMB Bulletin changes are reflected in the FY 2015 pre-floor, pre-reclassified hospital wage index, upon which the FY 2016 IPPS PPS wage index was based. We adopted these new OMB CBSA delineations in the FY 2016 IPF PPS wage index; therefore, they are also included in the FY 2017 IPF PPS wage index.

While we believe that the CBSA delineations implemented in the FY 2016 IPF PPS final rule resulted in wage index values that are more representative of the actual costs of labor in a given area, we also recognize that use of the new CBSA delineations resulted in reduced payments to some IPFs and increased payments to other IPFs, due to changes in wage index values. Therefore, in our FY 2016 IPF PPS final rule, we provided for a transition period to mitigate any negative impacts on facilities that experience reduced payments as a result of our adopting the new OMB CBSA delineations. We implemented these CBSA changes using a 1-year transition with a blended wage index for all providers (80 FR 46682 through 46689). The FY 2017 IPF PPS wage index and

subsequent IPF PPS wage indices will be based solely on the new OMB CBSA delineations. The final FY 2017 IPF PPS wage index is located on the CMS Web site at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/WageIndex.html>.

#### d. Adjustment for Rural Location and Continuing Phase-Out of the Rural Adjustment for IPFs That Lost Their Rural Adjustment Due to CBSA Changes Implemented in FY 2016

In the November 2004 IPF PPS final rule, we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. For FY 2017, we will continue to apply a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C). A complete discussion of the adjustment for rural locations appears in the November 2004 IPF PPS final rule (69 FR 66954).

As noted in section III.D.1.c of this notice, we adopted OMB updates to CBSA delineations in the FY 2016 IPF PPS transitional wage index. Adoption of the updated CBSAs changed the status of 37 IPF providers designated as "rural" in FY 2015 to "urban" for FY 2016 and subsequent fiscal years. As such, these 37 newly urban providers no longer receive the 17 percent rural adjustment.

In the FY 2016 IPF PPS final rule, we implemented a budget-neutral 3-year phase-out of the rural adjustment for the existing FY 2015 rural IPFs that became urban in FY 2016 and that experienced a loss in payments due to changes from the new CBSA delineations (80 FR 46689 to 46690). This policy allowed rural IPFs that were classified as urban in FY 2016 to receive two-thirds of the IPF PPS rural adjustment for FY 2016. For FY 2017, these IPFs will receive one-third of the IPF PPS rural adjustment. For FY 2018 and subsequent years, these IPFs will not receive any rural adjustment. We are now in the second year of the 3-year rural adjustment phase-out; therefore, these IPFs that were classified as rural in FY 2015, but were changed to urban in FY 2016 as a result of the OMB CBSA changes, will receive one-third of the 17 percent rural adjustment in FY 2017.

#### e. Budget Neutrality Adjustment

Changes to the wage index are made in a budget-neutral manner so that

updates do not increase expenditures. Therefore, for FY 2017, we will continue to apply a budget-neutrality adjustment in accordance with our existing budget-neutrality policy. This policy requires us to update the wage index in such a way that total estimated payments to IPFs for FY 2017 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the IPF PPS rates. We use the following steps to ensure that the rates reflect the update to the wage indexes (based on the FY 2012 hospital cost report data) and the labor-related share in a budget-neutral manner:

*Step 1.* Simulate estimated IPF PPS payments, using the FY 2016 wage index values and labor-related share (as published in the FY 2016 IPF PPS final rule (80 FR 46675 to 46679 and 46681 to 46690)).

*Step 2.* Simulate estimated IPF PPS payments using the FY 2017 wage index values (available on the CMS Web site) and labor-related share (based on the latest available data as discussed previously).

*Step 3.* Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the FY 2017 budget-neutral wage adjustment factor of 1.0007.

*Step 4.* Apply the FY 2017 budget-neutral wage adjustment factor from step 3 to the Federal per diem base rate for FY 2017, in addition to the market basket described in section III.A2 of this notice.

## 2. Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the ratio of the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census (ADC).

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under a PPS, and those paid under the TEFRA rate-of-increase limits. These direct GME payments are made separately from payments for hospital operating costs and are not part of the IPF PPS. The direct GME payments do not address the estimated higher indirect

operating costs teaching hospitals may face.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's "teaching variable," which is one plus the ratio of the number of FTE residents training in the IPF (subject to limitations described below) to the IPF's ADC.

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. The cap limits the number of FTE residents that teaching IPFs may count for the purpose of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a "base year" and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (publication date of the IPF PPS final rule). A complete discussion of the temporary adjustment to the FTE cap to reflect residents added due to hospital closure and by residency program appears in the January 27, 2011 IPF PPS proposed rule (76 FR 5018 through 5020) and the May 6, 2011 IPF PPS final rule (76 FR 26453 through 26456).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant. A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the May 2008 IPF PPS notice (73 FR 25721). As with other adjustment factors derived through the regression analysis, we do not plan to rerun the teaching adjustment factors in the regression analysis until we more fully analyze IPF PPS data. Therefore, in this FY 2017

notice, we will continue to retain the coefficient value of 0.5150 for the teaching adjustment to the Federal per diem base rate.

## 3. Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the county in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare PPSs (for example: The IPPS and LTCH PPS) adopted a cost of living adjustment (COLA) to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA for IPFs located in Alaska and Hawaii is made by multiplying the non-labor-related portion of the Federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

The COLA factors are published on the Office of Personnel Management (OPM) Web site (<https://www.opm.gov/oca/cola/rates.asp>).

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

- City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- Rest of the State of Alaska.

As stated in the November 2004 IPF PPS final rule, we update the COLA factors according to updates established by the OPM. However, sections 1911 through 1919 of the Nonforeign Area Retirement Equity Assurance Act, as contained in subtitle B of title XIX of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Pub. L. 111–84, October 28, 2009), transitions the Alaska and Hawaii COLAs to locality pay. Under section 1914 of NDAA, locality pay is being phased in over a 3-year period beginning in

January 2010, with COLA rates frozen as of the date of enactment, October 28, 2009, and then proportionately reduced to reflect the phase-in of locality pay.

When we published the proposed COLA factors in the January 2011 IPF PPS proposed rule (76 FR 4998), we inadvertently selected the FY 2010 COLA rates, which had been reduced to account for the phase-in of locality pay. We did not intend to propose the reduced COLA rates because that would have understated the adjustment. Since the 2009 COLA rates did not reflect the phase-in of locality pay, we finalized the FY 2009 COLA rates for RY 2010 through RY 2014.

In the FY 2013 IPPS/LTCH final rule (77 FR 53700 through 53701), we established a methodology for FY 2014 to update the COLA factors for Alaska and Hawaii. Under that methodology, we use a comparison of the growth in the Consumer Price Indices (CPIs) in Anchorage, Alaska and Honolulu, Hawaii relative to the growth in the overall CPI as published by the Bureau of Labor Statistics (BLS) to update the COLA factors for all areas in Alaska and Hawaii, respectively. As discussed in the FY 2013 IPPS/LTCH proposed rule (77 FR 28145), because BLS publishes CPI data for only Anchorage, Alaska and Honolulu, Hawaii, our methodology for updating the COLA factors uses a comparison of the growth in the CPIs for those cities relative to the growth in the overall CPI to update the COLA factors for all areas in Alaska and Hawaii, respectively. We believe that the relative price differences between these cities and the United States (as measured by the CPIs mentioned above) are generally appropriate proxies for the relative price differences between the “other areas” of Alaska and Hawaii and the United States.

The CPIs for “All Items” that BLS publishes for Anchorage, Alaska, Honolulu, Hawaii, and for the average U.S. city are based on a different mix of commodities and services than is reflected in the non-labor-related share of the IPPS market basket. As such, under the methodology we established to update the COLA factors, we calculated a “reweighted CPI” using the CPI for commodities and the CPI for services for each of the geographic areas to mirror the composition of the IPPS market basket non-labor-related share. The current composition of BLS’ CPI for “All Items” for all of the respective areas is approximately 40 percent commodities and 60 percent services. However, the non-labor-related share of the IPPS market basket is comprised of 60 percent commodities and 40 percent services. Therefore, under the

methodology established for FY 2014 in the FY 2013 IPPS/LTCH PPS final rule, we created reweighted indexes for Anchorage, Alaska, Honolulu, Hawaii, and the average U.S. city using the respective CPI commodities index and CPI services index and applying the approximate 60/40 weights from the IPPS market basket. This approach is appropriate because we would continue to make a COLA for hospitals located in Alaska and Hawaii by multiplying the non-labor-related portion of the standardized amount by a COLA factor.

Under the COLA factor update methodology established in the FY 2014 IPPS/LTCH final rule, we adjusted payments made to hospitals located in Alaska and Hawaii by incorporating a 25 percent cap on the CPI-updated COLA factors. We note that OPM’s COLA factors were calculated with a statutorily mandated cap of 25 percent, and since at least 1984, we have exercised our discretionary authority to adjust Alaska and Hawaii payments by incorporating this cap. In keeping with this historical policy, we continue to use such a cap because our CPI-updated COLA factors use the 2009 OPM COLA factors as a basis.

In FY 2015 IPF PPS rulemaking, we adopted the same methodology for the COLA factors applied under the IPPS because IPFs are hospitals with a similar mix of commodities and services. We think it is appropriate to have a consistent policy approach with that of other hospitals in Alaska and Hawaii. Therefore, in the FY 2015 IPF PPS final rule, we adopted the cost of living adjustment factors shown in Addendum A for IPFs located in Alaska and Hawaii. Under IPPS COLA policy, the COLA updates are determined every four years, when the IPPS market basket is rebased. Since the IPPS COLA factors were last updated in FY 2014, they are not scheduled to be updated again until FY 2018. As such, we will continue using the existing IPF PPS COLA factors in effect in FY 2016 for FY 2017. The IPF PPS COLA factors for FY 2017 are shown in Addendum A to this notice.

#### 4. Adjustment for IPFs With a Qualifying Emergency Department (ED)

The IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the Federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a freestanding psychiatric hospital with a qualifying ED or a distinct part psychiatric unit of an acute care hospital or a CAH, for preadmission services otherwise

payable under the Medicare Outpatient Prospective Payment System (OPPS), furnished to a beneficiary on the date of the beneficiary’s admission to the hospital and during the day immediately preceding the date of admission to the IPF (see § 413.40(c)(2)), and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception described below), regardless of whether a particular patient receives preadmission services in the hospital’s ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. Those IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each patient stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described below. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made when a patient is discharged from an acute care hospital or CAH and admitted to the same hospital’s or CAH’s psychiatric unit. We clarified in the November 2004 IPF PPS final rule (69 FR 66960) that an ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the acute care hospital or through the reasonable cost payment made to the CAH.

Therefore, when patients are discharged from an acute care hospital or CAH and admitted to the same hospital or CAH’s psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient’s stay in the IPF. For FY 2017, we will continue to retain the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factor appears in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the May 2006 IPF PPS final rule (71 FR 27070 through 27072).

#### E. Other Payment Adjustments and Policies

##### 1. Outlier Payment Overview

The IPF PPS includes an outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients. In the November 2004 IPF PPS

final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require more costly care and, therefore, reduce the incentives for IPFs to under-serve these patients.

We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the Federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments.

After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target. Each year when we update the IPF PPS, we simulate payments using the latest available data to compute the fixed dollar loss threshold so that outlier payments represent 2 percent of total projected IPF PPS payments.

## 2. Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we are updating the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy, which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the Federal per diem base rate for all other cases that are not outlier cases.

Based on an analysis of the latest available data (the March 2016 update of FY 2015 IPF claims) and rate increases, we believe it is necessary to update the fixed dollar loss threshold amount in order to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments. To update the IPF outlier threshold amount for FY 2017, we used FY 2015 claims data and the same methodology that we used to set the initial outlier threshold amount in the May 2006 IPF PPS final rule (71 FR 27072 and 27073), which is also the same methodology that we used to update the outlier threshold amounts for years 2008 through 2016. Based on an analysis of these updated data, we estimate that IPF outlier payments as a percentage of total estimated payments are approximately 2.1 percent in FY 2016. Therefore, we will update the outlier threshold amount to \$10,120 to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for FY 2017.

## 3. Update to IPF Cost-to-Charge Ratio Ceilings

Under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount plus the IPF PPS amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In the June 2003 IPPS final rule (68 FR 34494), we implemented changes to the IPPS policy used to determine CCRs for acute care hospitals because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs in order to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule (69 FR 66961), because we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS, we adopted a method to ensure the statistical accuracy of CCRs under the IPF PPS. Specifically, we adopted the following procedure in the November 2004 IPF PPS final rule: We calculated 2 national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas. We computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs

using the most recent CCRs entered in the CY 2016 Provider Specific File.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in FY 2017 is 1.9315 for rural IPFs, and 1.6374 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate, and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We apply the national CCRs to the following situations:

- New IPFs that have not yet submitted their first Medicare cost report. We continue to use these national CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.
- IPFs whose overall CCR is in excess of three standard deviations above the corresponding national geometric mean (that is, above the ceiling).
- Other IPFs for which the Medicare Administrative Contractor (MAC) obtains inaccurate or incomplete data with which to calculate a CCR.

We are updating the FY 2017 national median and ceiling CCRs for urban and rural IPFs based on the CCRs entered in the latest available IPF PPS Provider Specific File. Specifically, for FY 2017, to be used in each of the three situations listed above, using the most recent CCRs entered in the CY 2016 Provider Specific File, we estimate a national median CCR of 0.5960 for rural IPFs and a national median CCR of 0.4455 for urban IPFs. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations.

A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

## IV. Update on IPF PPS Refinements

For RY 2012, we identified several areas of concern for future refinement, and we invited comments on these issues in our RY 2012 proposed and final rules. For further discussion of these issues and to review the public comments, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432).

We have delayed making refinements to the IPF PPS until we have completed a thorough analysis of IPF PPS data on which to base those refinements. Specifically, we will delay updating the adjustment factors derived from the regression analysis until we have IPF

PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We have begun and will continue the necessary analysis to better understand IPF industry practices so that we may refine the IPF PPS in the future, as appropriate.

As we noted in the FY 2016 IPF PPS final rule (80 FR 46693 to 46694), our preliminary analysis of 2012 to 2013 IPF data found that over 20 percent of IPF stays reported no ancillary costs, such as laboratory and drug costs, in their cost reports, or laboratory or drug charges on their claims. Because we expect that most patients requiring hospitalization for active psychiatric treatment will need drugs and laboratory services, we again remind providers that the IPF PPS per diem payment rate includes the cost of all ancillary services, including drugs and laboratory services. We pay only the IPF for services furnished to a Medicare beneficiary who is an inpatient of that IPF, except for certain professional services, and payments are considered to be payments in full for all inpatient hospital services provided directly or under arrangement (see 42 CFR 412.404(d)), as specified in 42 CFR 409.10.

We are continuing to analyze data from claims and cost report that do not include ancillary charges or costs, and will be sharing our findings with the Center for Program Integrity and the Office of Financial Management for further investigation, as the results warrant. Our refinement analysis is dependent on recent precise data for costs, including ancillary costs. We will continue to collect these data and analyze them for both timeliness and accuracy with the expectation that these data will be used in a future refinement. Since we are not making refinements for FY 2017, we will continue to use the existing adjustment factors.

## V. Waiver of Notice and Comment

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice.

We find it is unnecessary to undertake notice and comment rulemaking for this action because the updates in this notice do not reflect any substantive changes in policy, but merely reflect the

application of previously established methodologies. Therefore, under 5 U.S.C. 553(b)(3)(B), for good cause, we waive notice and comment procedures.

## VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## VII. Regulatory Impact Analysis

### A. Statement of Need

This notice updates the prospective payment rates for Medicare inpatient hospital services provided by IPFs for discharges occurring during FY 2017 (October 1, 2016 through September 30, 2017). We are applying the 2012-based IPF market basket increase of 2.8 percent, less the productivity adjustment of 0.3 percentage point as required by 1886(s)(2)(A)(i) of the Act, and further reduced by 0.2 percentage point as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act, for a total FY 2017 payment rate update of 2.3 percent. In this notice, we are also updating the IPF labor-related share; updating the IPF Wage Index for FY 2017; and continuing with the second year of the rural adjustment phase-out for rural providers which became urban providers in FY 2016 as a result of FY 2016 changes to CBSA delineations.

### B. Overall Impact

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and

equity). A regulatory impact analysis (RIA) must be prepared for a major rules with economically significant effects (\$100 million or more in any 1 year). This notice is designated as economically “significant” under section 3(f)(1) of Executive Order 12866.

We estimate that the total impact of these changes for FY 2017 payments compared to FY 2016 payments will be a net increase of approximately \$100 million. This reflects a \$105 million increase from the update to the payment rates (+\$130 million from the unadjusted 2nd quarter 2016 IGI forecast of the 2012-based IPF market basket of 2.8 percent, –\$15 million for the productivity adjustment of 0.3 percentage point, and –\$10 million for the other adjustment of 0.2 percentage point), as well as a \$5 million decrease as a result of the update to the outlier threshold amount. Outlier payments are estimated to decrease from 2.1 percent in FY 2016 to 2.0 percent of total estimated IPF payments in FY 2017.

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are small entities, either by nonprofit status or having revenues of \$7.5 million to \$38.5 million or less in any 1 year, depending on industry classification (for details, refer to the SBA Small Business Size Standards found at [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf)).

Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs’ revenue derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA.

As shown in Table 1, we estimate that the overall revenue impact of this notice on all IPFs is to increase Medicare payments by approximately 2.2 percent. As a result, since the estimated impact of this notice is a net increase in revenue across almost all categories of IPFs, the Secretary has determined that this notice will have a positive revenue impact on a substantial number of small entities. MACs are not considered to be small entities. Individuals and states are not included in the definition of a small entity.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As discussed in detail below, the rates and policies set forth in this notice would not have an adverse impact on the rural hospitals based on the data of the 279 rural units and 64 rural hospitals in our database of 1,626 IPFs for which data were available. Therefore, the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately \$146 million. This notice will not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector of \$146 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. As stated above, this notice would not have a substantial effect on state and local governments.

### C. Anticipated Effects

In this section, we discuss the historical background of the IPF PPS and the impact of this notice on the Federal Medicare budget and on IPFs.

#### 1. Budgetary Impact

As discussed in the November 2004 and May 2006 IPF PPS final rules, we applied a budget neutrality factor to the Federal per diem base rate and ECT payment per treatment to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would

have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: Outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the May 2008 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

As discussed in section III.D.1 of this notice, we are using the wage index and labor-related share in a budget neutral manner by applying a wage index budget neutrality factor to the Federal per diem base rate and ECT payment per treatment. Therefore, the budgetary impact to the Medicare program of this notice will be due to the market basket update for FY 2017 of 2.8 percent (see section III.A.2 of this notice) less the productivity adjustment of 0.3 percentage point required by section 1886(s)(2)(A)(i) of the Act; further reduced by the “other adjustment” of 0.2 percentage point under sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act; and the update to the outlier fixed dollar loss threshold amount.

We estimate that the FY 2017 impact will be a net increase of \$100 million in payments to IPF providers. This reflects an estimated \$105 million increase from the update to the payment rates and a \$5 million decrease due to the update to the outlier threshold amount to set total estimated outlier payments at 2 percent of total estimated payments in FY 2017. This estimate does not include the implementation of the required 2 percentage point reduction of the market basket increase factor for any IPF that fails to meet the IPF quality reporting requirements (as discussed in section III.B.2).

#### 2. Impact on Providers

To show the impact on providers of the changes to the IPF PPS discussed in this notice, we compare estimated payments under the IPF PPS rates and factors for FY 2017 versus those under FY 2016. We determined the percent change of estimated FY 2017 IPF PPS payments compared to FY 2016 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the update to the outlier fixed dollar loss threshold amount; the updated wage index data; the changes to rural adjustment payments resulting from the second year of the rural adjustment

phase-out, due to changes in rural or urban status resulting from FY 2016 CBSA changes; the final labor-related share; and the final market basket update for FY 2017, as adjusted by the productivity adjustment according to section 1886(s)(2)(A)(i) of the Act, and the “other adjustment” according to sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act.

To illustrate the impacts of the FY 2017 changes in this notice, our analysis begins with a FY 2016 baseline simulation model based on FY 2015 IPF payments inflated to the midpoint of FY 2016 using IHS Global Insight Inc.’s most recent forecast of the market basket update (see section III.A.2. of this notice); the estimated outlier payments in FY 2016; the CBSA delineations for IPFs based on revised OMB delineations issued on February 28, 2013, in OMB Bulletin No. 13–01 (which were implemented in the FY 2016 IPF transitional wage index as described in section III.D.1); the FY 2015 pre-floor, pre-reclassified hospital wage index; the FY 2016 labor-related share; and the FY 2016 percentage amount of the rural adjustment. During the simulation, total outlier payments are maintained at 2 percent of total estimated IPF PPS payments.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The update to the outlier fixed dollar loss threshold amount;
- the FY 2016 pre-floor, pre-reclassified hospital wage index with the updated CBSA delineations, based on OMB’s February 28, 2013 Bulletin No. 13–01, which are applied in full in the FY 2017 IPF PPS wage index;
- the FY 2017 labor-related share;
- the market basket update for FY 2017 of 2.8 percent less the productivity adjustment of 0.3 percentage point in accordance with section 1886(s)(2)(A)(i) of the Act and further reduced by the “other adjustment” of 0.2 percentage point in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act, for a payment rate update of 2.3 percent.

Our final comparison illustrates the percent change in payments from FY 2016 (that is, October 1, 2015, to September 30, 2016) to FY 2017 (that is, October 1, 2016, to September 30, 2017) including all the changes in this notice.

TABLE 1—IPF IMPACTS FOR FY 2017  
[Percent change in columns 3 through 6]

Facility by type	Number of facilities	Outlier	CBSA wage index & labor share <sup>1</sup>	Payment rate update <sup>2</sup>	Total percent change <sup>3</sup>
(1)	(2)	(3)	(4)	(5)	(6)
All Facilities .....	1,626	−0.1	0.0	2.3	2.2
Total Urban .....	1,283	−0.1	0.1	2.3	2.3
Total Rural .....	343	−0.1	−0.6	2.3	1.6
Urban unit .....	834	−0.1	0.0	2.3	2.2
Urban hospital .....	449	0.0	0.2	2.3	2.5
Rural unit .....	279	−0.1	−0.6	2.3	1.6
Rural hospital .....	64	0.0	−0.8	2.3	1.4
By Type of Ownership:					
Freestanding IPFs:					
Urban Psychiatric Hospitals:					
Government .....	123	−0.1	0.0	2.3	2.2
Non-Profit .....	103	0.0	0.0	2.3	2.3
For-Profit .....	223	0.0	0.3	2.3	2.6
Rural Psychiatric Hospitals:					
Government .....	35	0.0	−0.6	2.3	1.7
Non-Profit .....	11	0.0	0.2	2.3	2.5
For-Profit .....	18	0.0	−1.2	2.3	1.1
IPF Units:					
Urban:					
Government .....	122	−0.2	0.0	2.3	2.1
Non-Profit .....	536	−0.1	0.1	2.3	2.3
For-Profit .....	176	−0.1	0.0	2.3	2.2
Rural:					
Government .....	71	−0.1	−0.7	2.3	1.4
Non-Profit .....	141	−0.1	−0.5	2.3	1.7
For-Profit .....	67	−0.1	−0.6	2.3	1.6
By Teaching Status:					
Non-teaching .....	1,438	−0.1	0.0	2.3	2.2
Less than 10% interns and residents to beds .....	100	−0.1	0.1	2.3	2.3
10% to 30% interns and residents to beds .....	60	−0.2	0.1	2.3	2.2
More than 30% interns and residents to beds .....	28	−0.2	0.1	2.3	2.1
By Region:					
New England .....	109	−0.1	0.5	2.3	2.7
Mid-Atlantic .....	237	−0.1	0.1	2.3	2.3
South Atlantic .....	242	−0.1	−0.1	2.3	2.2
East North Central .....	267	−0.1	0.1	2.3	2.3
East South Central .....	158	−0.1	−0.5	2.3	1.7
West North Central .....	135	−0.1	−0.4	2.3	1.8
West South Central .....	250	−0.1	−0.4	2.3	1.8
Mountain .....	105	−0.1	−0.2	2.3	2.0
Pacific .....	123	−0.1	0.8	2.3	3.0
By Bed Size:					
Psychiatric Hospitals:					
Beds: 0–24 .....	83	0.0	−0.6	2.3	1.7
Beds: 25–49 .....	82	0.0	0.2	2.3	2.4
Beds: 50–75 .....	84	0.0	0.0	2.3	2.3
Beds: 76 + .....	264	0.0	0.2	2.3	2.5
Psychiatric Units:					
Beds: 0–24 .....	653	−0.1	−0.2	2.3	2.0
Beds: 25–49 .....	298	−0.1	0.0	2.3	2.2
Beds: 50–75 .....	105	−0.1	0.1	2.3	2.2
Beds: 76 + .....	57	−0.1	0.1	2.3	2.3

<sup>1</sup> Includes a FY 2017 IPF wage index, a labor-related share of 0.751, and a rural adjustment. Providers which changed from rural to urban status in FY 2016 will receive 1/3 of the 17 percent rural adjustment in FY 2017.

<sup>2</sup> This column reflects the payment rate update impact of the IPF market basket update for FY 2017 of 2.8 percent, a 0.3 percentage point reduction for the productivity adjustment as required by section 1886(s)(2)(A)(i) of the Act, and a 0.2 percentage point reduction in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act.

<sup>3</sup> Percent changes in estimated payments from FY 2016 to FY 2017 include all of the changes presented in this notice. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

### 3. Results

Table 1 displays the results of our analysis. The table groups IPFs into the categories listed below based on

characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from the Healthcare Cost Report Information System:

- Facility Type
- Location
- Teaching Status Adjustment
- Census Region
- Size



The top row of the table shows the overall impact on the 1,626 IPFs included in this analysis. In column 3, we present the effects of the update to the outlier fixed dollar loss threshold amount. We estimate that IPF outlier payments as a percentage of total IPF payments are 2.1 percent in FY 2016. Thus, we are adjusting the outlier threshold amount in this notice to set total estimated outlier payments equal to 2 percent of total payments in FY 2017. The estimated change in total IPF payments for FY 2017, therefore, includes an approximate 0.1 percent decrease in payments because the outlier portion of total payments is expected to decrease from approximately 2.1 percent to 2.0 percent.

The overall impact of this outlier adjustment update (as shown in column 3 of Table 1), across all hospital groups, is to decrease total estimated payments to IPFs by 0.1 percent. The largest decrease in payments is estimated to be a 0.2 percent decrease in payments for urban government IPF units and IPFs with 10 percent or greater interns and residents to beds.

In column 4, we present the effects of the budget-neutral update to the IPF wage index and the Labor Related Share (LRS). This represents the effect of using the most recent wage data available and taking into account the updated OMB delineations. That is, the impact represented in this column reflects the update from the FY 2016 IPF transitional wage index to the FY 2017 IPF wage index, which includes the full effect of FY 2016 changes to the OMB delineations, and the LRS update from 75.2 percent in FY 2016 to 75.1 percent in FY 2017. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4, however, there will be distributional effects among different categories of IPFs. For example, we estimate the largest increase in payments to be 0.8 percent for IPFs in the Pacific region, and the largest decrease in payments to be 1.2 percent for rural for-profit freestanding IPFs.

In column 5, we present the estimated effects of the update to the IPF PPS payment rates of 2.3 percent, which are based on the 2012-based IPF market basket update of 2.8 percent, less the productivity adjustment of 0.3 percentage point in accordance with section 1886(s)(2)(A)(i) of the Act, and further reduced by 0.2 percentage point in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act.

Finally, column 6 compares our estimates of the total changes reflected

in this notice for FY 2017 to the estimates for FY 2016 (without these changes). The average estimated increase for all IPFs is approximately 2.2 percent. This estimated net increase includes the effects of the 2.8 percent market basket update reduced by the productivity adjustment of 0.3 percentage point, as required by section 1886(s)(2)(A)(i) of the Act and further reduced by the "other adjustment" of 0.2 percentage point, as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(D) of the Act. It also includes the overall estimated 0.1 percent decrease in estimated IPF outlier payments as a percent of total payments from the update to the outlier fixed dollar loss threshold amount.

IPF payments are estimated to increase by 2.3 percent in urban areas and 1.6 percent in rural areas. Overall, IPFs are estimated to experience a net increase in payments as a result of the updates in this notice. The largest payment increase is estimated at 3.0 percent for IPFs in the Pacific region.

#### 4. Effect on Beneficiaries

Under the IPF PPS, IPFs will receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the FY 2017 IPF PPS, but we continue to expect that paying prospectively for IPF services will enhance the efficiency of the Medicare program.

#### D. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule; applying the FY 2017 2012-based IPF PPS market basket update of 2.8 percent, reduced by the statutorily required multifactor productivity adjustment of 0.3 percentage point and the other adjustment of 0.2 percentage point, along with the wage index budget neutrality adjustment to update the payment rates; finalizing a FY 2017 IPF PPS wage index which is fully based upon the OMB CBSA designations which were adopted in the FY 2016 IPF PPS wage index; and continuing with the second year of the 3-year phase-out of the rural adjustment for IPF providers which changed from rural to urban status in FY 2016 as a result of adopting the updated OMB CBSA delineations used in the FY 2016 IPF PPS transitional wage index.

#### E. Accounting Statement

As required by OMB Circular A-4 (available at [https://www.whitehouse.gov/omb/circulars\\_a004\\_a-4](https://www.whitehouse.gov/omb/circulars_a004_a-4)), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the updates to the IPF PPS wage index and payment rates in this notice. This table provides our best estimate of the increase in Medicare payments under the IPF PPS as a result of the changes presented in this notice and based on the data for 1,626 IPFs in our database.

**TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES**

Change in Estimated Transfers from FY 2016 IPF PPS to FY 2017 IPF PPS	
Category	Transfers
Annualized Monetized Transfers.	\$100 million.
From Whom to Whom?	Federal Government to IPF Medicare Providers.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Dated: July 18, 2016.

**Andrew M. Slavitt,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Dated: July 19, 2016.

**Sylvia M. Burwell,**

*Secretary, Department of Health and Human Services.*

**Note:** The following addenda will not publish in the Code of Federal Regulations.

#### Addendum A—IPF PPS FY 2017 Final Rates and Adjustment Factors

##### PER DIEM RATE

Federal Per Diem Base Rate	\$761.37
Labor Share (0.751) .....	\$571.79
Non-Labor Share (0.249) .....	\$189.58

##### PER DIEM RATE APPLYING THE 2 PERCENTAGE POINT REDUCTION

Federal Per Diem Base Rate	\$746.48
Labor Share (0.751) .....	\$560.61
Non-Labor Share (0.249) .....	\$185.87

*Fixed Dollar Loss Threshold Amount:* \$10,120.

*Wage Index Budget-Neutrality Factor:* 1.0007.

## FACILITY ADJUSTMENTS

Rural Adjustment Factor .....	1.17.
Teaching Adjustment Factor .....	0.5150.
Wage Index .....	Pre-reclass Hospital Wage Index (FY 2016).

COST OF LIVING ADJUSTMENTS (COLAS)		PATIENT ADJUSTMENTS—Continued		VARIABLE PER DIEM ADJUSTMENTS— Continued	
Area	Cost of living adjustment factor	ECT—Per Treatment Apply- ing the 2 Percentage Point Reduction .....	\$321.38		Adjustment factor
Alaska:		VARIABLE PER DIEM ADJUSTMENTS		Day 15 .....	0.98
City of Anchorage and 80- kilometer (50-mile) ra- dius by road .....	1.23	Day 1—Facility Without a Qualifying Emergency De- partment .....	1.19	Day 16 .....	0.97
City of Fairbanks and 80- kilometer (50-mile) ra- dius by road .....	1.23	Day 1—Facility With a Quali- fying Emergency Depart- ment .....	1.31	Day 17 .....	0.97
City of Juneau and 80-kilo- meter (50-mile) radius by road .....	1.23	Day 2 .....	1.12	Day 18 .....	0.96
Rest of Alaska .....	1.25	Day 3 .....	1.08	Day 19 .....	0.95
Hawaii:		Day 4 .....	1.05	Day 20 .....	0.95
City and County of Hono- lulu .....	1.25	Day 5 .....	1.04	Day 21 .....	0.95
County of Hawaii .....	1.19	Day 6 .....	1.02	After Day 21 .....	0.92
County of Kauai .....	1.25	Day 7 .....	1.01	AGE ADJUSTMENTS	
County of Maui and Coun- ty of Kalawao .....	1.25	Day 8 .....	1.01	Age (in years)	Adjustment factor
PATIENT ADJUSTMENTS		Day 9 .....	1.00	Under 45 .....	1.00
ECT—Per Treatment .....	\$327.78	Day 10 .....	1.00	45 and under 50 .....	1.01
		Day 11 .....	0.99	50 and under 55 .....	1.02
		Day 12 .....	0.99	55 and under 60 .....	1.04
		Day 13 .....	0.99	60 and under 65 .....	1.07
		Day 14 .....	0.99	65 and under 70 .....	1.10
				70 and under 75 .....	1.13
				75 and under 80 .....	1.15
				80 and over .....	1.17

## DRG ADJUSTMENTS

MS-DRG	MS-DRG Descriptions	Adjustment factor
056 .....	Degenerative nervous system disorders w MCC .....	1.05
057 .....	Degenerative nervous system disorders w/o MCC .....	1.05
080 .....	Nontraumatic stupor & coma w MCC .....	1.07
081 .....	Nontraumatic stupor & coma w/o MCC .....	1.07
876 .....	O.R. procedure w principal diagnoses of mental illness .....	1.22
880 .....	Acute adjustment reaction & psychosocial dysfunction .....	1.05
881 .....	Depressive neuroses .....	0.99
882 .....	Neuroses except depressive .....	1.02
883 .....	Disorders of personality & impulse control .....	1.02
884 .....	Organic disturbances & mental retardation .....	1.03
885 .....	Psychoses .....	1.00
886 .....	Behavioral & developmental disorders .....	0.99
887 .....	Other mental disorder diagnoses .....	0.92
894 .....	Alcohol/drug abuse or dependence, left AMA .....	0.97
895 .....	Alcohol/drug abuse or dependence w rehabilitation therapy .....	1.02
896 .....	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC .....	0.88
897 .....	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC .....	0.88

COMORBIDITY ADJUSTMENTS		COMORBIDITY ADJUSTMENTS— Continued		COMORBIDITY ADJUSTMENTS— Continued	
Comorbidity	Adjustment factor	Comorbidity	Adjustment factor	Comorbidity	Adjustment factor
Developmental Disabilities ...	1.04	Oncology Treatment .....	1.07	Gangrene .....	1.10
Coagulation Factor Deficit ...	1.13	Uncontrolled Diabetes Mellitus .....	1.05	Chronic Obstructive Pul- monary Disease .....	1.12
Tracheostomy .....	1.06	Severe Protein Malnutrition ..	1.13	Artificial Openings—Diges- tive & Urinary .....	1.08
Eating and Conduct Dis- orders .....	1.12	Drug/Alcohol Induced Mental Disorders .....	1.03		
Infectious Diseases .....	1.07	Cardiac Conditions .....	1.11		
Renal Failure, Acute .....	1.11				
Renal Failure, Chronic .....	1.11				

COMORBIDITY ADJUSTMENTS—  
Continued

Comorbidity	Adjustment factor
Severe Musculoskeletal & Connective Tissue Diseases .....	1.09

COMORBIDITY ADJUSTMENTS—  
Continued

Comorbidity	Adjustment factor
Poisoning .....	1.11

## NATIONAL MEDIAN AND CEILING COST-TO-CHARGE RATIOS (CCRs)

	Rural	Urban
National Median CCRs .....	0.5960	0.4455
National Ceiling CCRs .....	1.9315	1.6374

**Addendum B—Changes to the FY 2017  
ICD-10-CM/PCS Code Sets Which  
Affect FY the FY 2017 IPF PPS  
Comorbidity Adjustments**

Add the following codes to the  
Oncology Treatment code list:

Four IPF PPS Comorbidity Categories  
Were Affected

## (1) Oncology Treatment

DX	Long description
C49A0 .....	Gastrointestinal stromal tumor, unspecified site.
C49A1 .....	Gastrointestinal stromal tumor of esophagus.
C49A2 .....	Gastrointestinal stromal tumor of stomach.
C49A3 .....	Gastrointestinal stromal tumor of small intestine.
C49A4 .....	Gastrointestinal stromal tumor of large intestine.
C49A5 .....	Gastrointestinal stromal tumor of rectum.
C49A9 .....	Gastrointestinal stromal tumor of other sites.
D49511 .....	Neoplasm of unspecified behavior of right kidney.
D49512 .....	Neoplasm of unspecified behavior of left kidney.
D4959 .....	Neoplasm unspecified behavior of other genitourinary organ.

Delete the following code from the  
Oncology Treatment code list:

DX	Long description
D495 .....	Neoplasm of unspecified behavior of other genitourinary organs.

The following codes from the  
Oncology Treatment code list have long  
description changes:

DX	Old long description	New long description
C7A094 .....	Malignant carcinoid tumor of the foregut NOS .....	Malignant carcinoid tumor of the foregut, unspecified.
C7A095 .....	Malignant carcinoid tumor of the midgut NOS .....	Malignant carcinoid tumor of the midgut, unspecified.
C7A096 .....	Malignant carcinoid tumor of the hindgut NOS .....	Malignant carcinoid tumor of the hindgut, unspecified.
C8110 .....	Nodular sclerosis classical Hodgkin lymphoma, unspecified site.	Nodular sclerosis Hodgkin lymphoma, unspecified site.
C8111 .....	Nodular sclerosis classical Hodgkin lymphoma, lymph nodes of head, face, and neck.	Nodular sclerosis Hodgkin lymphoma, lymph nodes of head, face, and neck.
C8112 .....	Nodular sclerosis classical Hodgkin lymphoma, intrathoracic lymph nodes.	Nodular sclerosis Hodgkin lymphoma, intrathoracic lymph nodes.
C8113 .....	Nodular sclerosis classical Hodgkin lymphoma, intra-abdominal lymph nodes.	Nodular sclerosis Hodgkin lymphoma, intra-abdominal lymph nodes.
C8114 .....	Nodular sclerosis classical Hodgkin lymphoma, lymph nodes of axilla and upper limb.	Nodular sclerosis Hodgkin lymphoma, lymph nodes of axilla and upper limb.
C8115 .....	Nodular sclerosis classical Hodgkin lymphoma, lymph nodes of inguinal region and lower limb.	Nodular sclerosis Hodgkin lymphoma, lymph nodes of inguinal region and lower limb.
C8116 .....	Nodular sclerosis classical Hodgkin lymphoma, intrapelvic lymph nodes.	Nodular sclerosis Hodgkin lymphoma, intrapelvic lymph nodes.

DX	Old long description	New long description
C8117 .....	Nodular sclerosis classical Hodgkin lymphoma, spleen .....	Nodular sclerosis Hodgkin lymphoma, spleen.
C8118 .....	Nodular sclerosis classical Hodgkin lymphoma, lymph nodes of multiple sites.	Nodular sclerosis Hodgkin lymphoma, lymph nodes of multiple sites.
C8119 .....	Nodular sclerosis classical Hodgkin lymphoma, extranodal and solid organ sites.	Nodular sclerosis Hodgkin lymphoma, extranodal and solid organ sites.
C8120 .....	Mixed cellularity classical Hodgkin lymphoma, unspecified site.	Mixed cellularity Hodgkin lymphoma, unspecified site.
C8121 .....	Mixed cellularity classical Hodgkin lymphoma, lymph nodes of head, face, and neck.	Mixed cellularity Hodgkin lymphoma, lymph nodes of head, face, and neck.
C8122 .....	Mixed cellularity classical Hodgkin lymphoma, intrathoracic lymph nodes.	Mixed cellularity Hodgkin lymphoma, intrathoracic lymph nodes.
C8123 .....	Mixed cellularity classical Hodgkin lymphoma, intra-abdominal lymph nodes.	Mixed cellularity Hodgkin lymphoma, intra-abdominal lymph nodes.
C8124 .....	Mixed cellularity classical Hodgkin lymphoma, lymph nodes of axilla and upper limb.	Mixed cellularity Hodgkin lymphoma, lymph nodes of axilla and upper limb.
C8125 .....	Mixed cellularity classical Hodgkin lymphoma, lymph nodes of inguinal region and lower limb.	Mixed cellularity Hodgkin lymphoma, lymph nodes of inguinal region and lower limb.
C8126 .....	Mixed cellularity classical Hodgkin lymphoma, intrapelvic lymph nodes.	Mixed cellularity Hodgkin lymphoma, intrapelvic lymph nodes.
C8127 .....	Mixed cellularity classical Hodgkin lymphoma, spleen .....	Mixed cellularity Hodgkin lymphoma, spleen.
C8128 .....	Mixed cellularity classical Hodgkin lymphoma, lymph nodes of multiple sites.	Mixed cellularity Hodgkin lymphoma, lymph nodes of multiple sites.
C8129 .....	Mixed cellularity classical Hodgkin lymphoma, extranodal and solid organ sites.	Mixed cellularity Hodgkin lymphoma, extranodal and solid organ sites.
C8130 .....	Lymphocyte depleted classical Hodgkin lymphoma, unspecified site.	Lymphocyte depleted Hodgkin lymphoma, unspecified site.
C8131 .....	Lymphocyte depleted classical Hodgkin lymphoma, lymph nodes of head, face, and neck.	Lymphocyte depleted Hodgkin lymphoma, lymph nodes of head, face, and neck.
C8132 .....	Lymphocyte depleted classical Hodgkin lymphoma, intrathoracic lymph nodes.	Lymphocyte depleted Hodgkin lymphoma, intrathoracic lymph nodes.
C8133 .....	Lymphocyte depleted classical Hodgkin lymphoma, intra-abdominal lymph nodes.	Lymphocyte depleted Hodgkin lymphoma, intra-abdominal lymph nodes.
C8134 .....	Lymphocyte depleted classical Hodgkin lymphoma, lymph nodes of axilla and upper limb.	Lymphocyte depleted Hodgkin lymphoma, lymph nodes of axilla and upper limb.
C8135 .....	Lymphocyte depleted classical Hodgkin lymphoma, lymph nodes of inguinal region and lower limb.	Lymphocyte depleted Hodgkin lymphoma, lymph nodes of inguinal region and lower limb.
C8136 .....	Lymphocyte depleted classical Hodgkin lymphoma, intrapelvic lymph nodes.	Lymphocyte depleted Hodgkin lymphoma, intrapelvic lymph nodes.
C8137 .....	Lymphocyte depleted classical Hodgkin lymphoma, spleen .....	Lymphocyte depleted Hodgkin lymphoma, spleen.
C8138 .....	Lymphocyte depleted classical Hodgkin lymphoma, lymph nodes of multiple sites.	Lymphocyte depleted Hodgkin lymphoma, lymph nodes of multiple sites.
C8139 .....	Lymphocyte depleted classical Hodgkin lymphoma, extranodal and solid organ sites.	Lymphocyte depleted Hodgkin lymphoma, extranodal and solid organ sites.
C8140 .....	Lymphocyte-rich classical Hodgkin lymphoma, unspecified site.	Lymphocyte-rich Hodgkin lymphoma, unspecified site.
C8141 .....	Lymphocyte-rich classical Hodgkin lymphoma, lymph nodes of head, face, and neck.	Lymphocyte-rich Hodgkin lymphoma, lymph nodes of head, face, and neck.
C8142 .....	Lymphocyte-rich classical Hodgkin lymphoma, intrathoracic lymph nodes.	Lymphocyte-rich Hodgkin lymphoma, intrathoracic lymph nodes.
C8143 .....	Lymphocyte-rich classical Hodgkin lymphoma, intra-abdominal lymph nodes.	Lymphocyte-rich Hodgkin lymphoma, intra-abdominal lymph nodes.
C8144 .....	Lymphocyte-rich classical Hodgkin lymphoma, lymph nodes of axilla and upper limb.	Lymphocyte-rich Hodgkin lymphoma, lymph nodes of axilla and upper limb.
C8145 .....	Lymphocyte-rich classical Hodgkin lymphoma, lymph nodes of inguinal region and lower limb.	Lymphocyte-rich Hodgkin lymphoma, lymph nodes of inguinal region and lower limb.
C8146 .....	Lymphocyte-rich classical Hodgkin lymphoma, intrapelvic lymph nodes.	Lymphocyte-rich Hodgkin lymphoma, intrapelvic lymph nodes.
C8147 .....	Lymphocyte-rich classical Hodgkin lymphoma, spleen .....	Lymphocyte-rich Hodgkin lymphoma, spleen.
C8148 .....	Lymphocyte-rich classical Hodgkin lymphoma, lymph nodes of multiple sites.	Lymphocyte-rich Hodgkin lymphoma, lymph nodes of multiple sites.
C8149 .....	Lymphocyte-rich classical Hodgkin lymphoma, extranodal and solid organ sites.	Lymphocyte-rich Hodgkin lymphoma, extranodal and solid organ sites.
C8170 .....	Other classical Hodgkin lymphoma, unspecified site .....	Other Hodgkin lymphoma, unspecified site.
C8171 .....	Other classical Hodgkin lymphoma, lymph nodes of head, face, and neck.	Other Hodgkin lymphoma, lymph nodes of head, face, and neck.
C8172 .....	Other classical Hodgkin lymphoma, intrathoracic lymph nodes.	Other Hodgkin lymphoma, intrathoracic lymph nodes.
C8173 .....	Other classical Hodgkin lymphoma, intra-abdominal lymph nodes.	Other Hodgkin lymphoma, intra-abdominal lymph nodes.
C8174 .....	Other classical Hodgkin lymphoma, lymph nodes of axilla and upper limb.	Other Hodgkin lymphoma, lymph nodes of axilla and upper limb.
C8175 .....	Other classical Hodgkin lymphoma, lymph nodes of inguinal region and lower limb.	Other Hodgkin lymphoma, lymph nodes of inguinal region and lower limb.

DX	Old long description	New long description
C8176 .....	Other classical Hodgkin lymphoma, intrapelvic lymph nodes.	Other Hodgkin lymphoma, intrapelvic lymph nodes.
C8177 .....	Other classical Hodgkin lymphoma, spleen .....	Other Hodgkin lymphoma, spleen.
C8178 .....	Other classical Hodgkin lymphoma, lymph nodes of multiple sites.	Other Hodgkin lymphoma, lymph nodes of multiple sites.
C8179 .....	Other classical Hodgkin lymphoma, extranodal and solid organ sites.	Other Hodgkin lymphoma, extranodal and solid organ sites.
D3A094 .....	Benign carcinoid tumor of the foregut NOS .....	Benign carcinoid tumor of the foregut, unspecified.
D3A095 .....	Benign carcinoid tumor of the midgut NOS .....	Benign carcinoid tumor of the midgut, unspecified.
D3A096 .....	Benign carcinoid tumor of the hindgut NOS .....	Benign carcinoid tumor of the hindgut, unspecified.

## 2) Oncology Treatment Procedure

Add the following code to the  
Oncology Treatment procedure code  
list:

DX	Long description
3E0Q005 .....	Introduction of Other Antineoplastic into Cranial Cavity and Brain, Open Approach.

## 3) Infectious Disease

Add the following code to the  
Infectious Disease code list:

DX	Long description
A925 .....	Zika virus disease.

## 4) Artificial Openings Digestive and Urinary

Add the following codes to the  
Artificial Openings, Digestive and  
Urinary code list:

DX	Long description
N99523 .....	Herniation of incontinent stoma of urinary tract.
N99524 .....	Stenosis of incontinent stoma of urinary tract.
N99533 .....	Herniation of continent stoma of urinary tract.
N99534 .....	Stenosis of continent stoma of urinary tract.

The following codes from the  
Artificial Openings Digestive and

Urinary code list have long description  
changes:

DX	Old long description	New long description
N99520 .....	Hemorrhage of other external stoma of urinary tract .....	Hemorrhage of incontinent external stoma of urinary tract.
N99521 .....	Infection of other external stoma of urinary tract .....	Infection of incontinent external stoma of urinary tract.
N99522 .....	Malfunction of other external stoma of urinary tract .....	Malfunction of incontinent external stoma of urinary tract.
N99528 .....	Other complication of other external stoma of urinary tract.	Other complication of incontinent external stoma of urinary tract.
N99530 .....	Hemorrhage of other stoma of urinary tract .....	Hemorrhage of continent stoma of urinary tract.
N99531 .....	Infection of other stoma of urinary tract .....	Infection of continent stoma of urinary tract.
N99532 .....	Malfunction of other stoma of urinary tract .....	Malfunction of continent stoma of urinary tract.
N99538 .....	Other complication of other stoma of urinary tract .....	Other complication of continent stoma of urinary tract.

Tables showing the complete listing of ICD-10-CM/PCS codes underlying the IPF PPS comorbidity adjustment and the IPF PPS Code First adjustment, and associated with the IPF PPS ECT per treatment payment, are available online at: <https://www.cms.gov/Medicare/>

*Medicare-Fee-for-Service-Payment/  
InpatientPsychFacilPPS/tools.html.*

[FR Doc. 2016-17982 Filed 7-28-16; 4:15 pm]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

Proposed Projects:

**Title:** OCSE–75 Tribal Child Support Enforcement Program Annual Data Report

**OMB No.:** 0970–0320

**Description:** The data collected by form OCSE–75 are used to prepare the OCSE preliminary and annual data

reports. In addition, Tribes administering CSE programs under Title IV–D of the Social Security Act are required to report program status and accomplishments in an annual narrative report and submit the OCSE–75 report annually.

**Respondents:** Tribal Child Support Enforcement Organizations or the Department/Agency/Bureau responsible for Child Support Enforcement in each tribe.

#### ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–75 .....	60	1	60	3,600
Estimated Total Annual Burden Hours .....				3,600

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35) Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attn: ACF Reports Clearance Officer. Email address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2016–18082 Filed 7–29–16; 8:45 am]

**BILLING CODE 4184–01–P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Administration on Community Living

##### Proposed Information Collection Activity; Comment Request; State Developmental Disabilities Council 5-Year State Plan

**AGENCY:** Administration for Community Living, Administration on Intellectual and Developmental Disabilities, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration on Intellectual and Developmental Disabilities (AIDD), Administration for Community Living (ACL) is announcing an opportunity to comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 30 days for public comment in response to the notice. This notice collects comments on the information collection requirements relating to an existing collection: State Developmental Disabilities Council 5-Year State Plan, 0985–0029.

**DATES:** Submit written comments on the collection of information by August 31, 2016.

**ADDRESSES:** Submit electronic comments on the collection of information to: Submit written comments on the collection of

information to by fax 202.395.5806 or by email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov), Attn: OMB Desk Officer for ACL.

##### FOR FURTHER INFORMATION CONTACT:

Allison Cruz ([allison.cruz@acl.hhs.gov](mailto:allison.cruz@acl.hhs.gov)).

##### SUPPLEMENTARY INFORMATION:

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration on Community Living is soliciting public comment on the specific aspects of the information collection described above. The Department specifically requests comments on: (a) Whether the proposed Collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden information to be collected; and (e) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection technique comments and or other forms of information technology. Consideration will be given to comments and suggestions submitted within 30 days of this publication. The proposed data collection tools can be found at the ACL Web site [http://www.acl.gov/Programs/AIDD/Program\\_Resource\\_Search/Results\\_DDC.aspx](http://www.acl.gov/Programs/AIDD/Program_Resource_Search/Results_DDC.aspx).

Respondents: 56 State Developmental Disabilities Councils.

#### ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Developmental Disabilities Council 5-Year State Plan .....	56	1	367	20,552

Estimated Total Annual Burden  
Hours: 20,552.

Dated: July 25, 2016.

**Kathy Greenlee,**

*Administrator and Assistant Secretary for  
Aging.*

[FR Doc. 2016-18177 Filed 7-29-16; 8:45 am]

**BILLING CODE 4154-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

[Docket No. FDA-2010-D-0350]

#### **Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Tobacco Retailers on Tobacco Retailer Training Programs**

**AGENCY:** Food and Drug Administration,  
HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug  
Administration (FDA or we) is  
announcing that a proposed collection  
of information has been submitted to the  
Office of Management and Budget  
(OMB) for review and clearance under  
the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the  
collection of information by August 31,  
2016.

**ADDRESSES:** To ensure that comments on  
the information collection are received,  
OMB recommends that written  
comments be faxed to the Office of  
Information and Regulatory Affairs,  
OMB, Attn: FDA Desk Officer, FAX:  
202-395-7285, or emailed to [oir\\_](mailto:oir_submission@omb.eop.gov)  
[submission@omb.eop.gov](mailto:submission@omb.eop.gov). All  
comments should be identified with the  
OMB control number 0910-0745. Also  
include the FDA docket number found  
in brackets in the heading of this  
document.

**FOR FURTHER INFORMATION CONTACT:** FDA  
PRA Staff, Office of Operations, Food  
and Drug Administration, FDA PRA  
Staff, Office of Operations, Food and  
Drug Administration, Three White Flint  
North, 10A63, 11601 Landsdown St.,  
North Bethesda, MD 20851, [PRAStaff@](mailto:PRAStaff@fda.hhs.gov)  
[fda.hhs.gov](mailto:fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In  
compliance with 44 U.S.C. 3507, FDA  
has submitted the following proposed  
collection of information to OMB for  
review and clearance.

#### **Guidance for Tobacco Retailers on Tobacco Retailer Training Programs OMB Control Number 0910-0745— Extension**

The Family Smoking Prevention and  
Tobacco Control Act (Tobacco Control  
Act) (Pub. L. 111-31) does not require  
retailers to implement retailer training  
programs. However, the statute does  
provide for lesser civil money penalties  
for violations of access, advertising, and  
promotion restrictions of regulations  
issued under section 906(d) of the  
Federal Food, Drug, and Cosmetic Act  
(21 U.S.C. 387f(d)), as amended by the  
Tobacco Control Act, for retailers who  
have implemented a training program  
that complies with standards developed  
by FDA for such programs. FDA intends  
to issue regulations establishing  
standards for approved retailer training  
programs. In the interim, the guidance  
is intended to assist tobacco retailers in  
implementing effective training  
programs for employees.

The guidance discusses the elements  
that should be covered in a training  
program, such as: (1) Federal laws  
restricting the access to, and the  
advertising and promotion of, cigarettes  
and smokeless tobacco products; (2) the  
health and economic effects of tobacco  
use, especially when the tobacco use  
begins at a young age; (3) written  
company policies against sales to  
minors; (4) identification of the tobacco  
products sold in the retail establishment  
that are subject to the Federal laws  
prohibiting their sale to persons under  
the age of 18; (5) age verification  
methods; (6) practical guidelines for  
refusing sales; and (7) testing to ensure  
that employees have the required  
knowledge. The guidance recommends  
that retailers require current and new  
employees to take a written test prior to  
selling tobacco products and that  
refresher training be provided at least  
annually and more frequently as  
needed. The guidance recommends that  
retailers maintain certain written  
records documenting that all individual  
employees have been trained and that  
retailers retain these records for 4 years  
in order to be able to provide evidence  
of a training program during the 48-  
month time period covered by the civil  
money penalty schedules in section  
103(q)(2)(A) of the Tobacco Control Act.

The guidance also recommends that  
retailers implement certain hiring and  
management practices as part of an  
effective retailer training program. The  
guidance suggests that applicants and  
current employees be notified both  
verbally and in writing of the  
importance of complying with laws  
prohibiting the sales of tobacco products

to persons under the age of 18 and that  
they should be required to sign an  
acknowledgement stating that they have  
read and understand the information. In  
addition, FDA recommends that  
retailers implement an internal  
compliance check program and  
document the procedures and corrective  
actions for the program.

FDA's estimate of the number of  
respondents in tables 1 and 2 is based  
on data reported to the U.S. Department  
of Health and Human Services  
Substance Abuse and Mental Health  
Services Administration (SAMHSA).  
According to the fiscal year 2009  
Annual Synar Report, there are 372,677  
total retail tobacco outlets in the 50  
States, District of Columbia, and 8 U.S.  
territories that are accessible to youth  
(meaning that there is no State law  
restricting access to these outlets to  
individuals older than age 18). Inflating  
this number by about 10 percent to  
account for outlets in States that sell  
tobacco but are, by law, inaccessible to  
minors, results in an estimated total  
number of tobacco outlets of 410,000.  
We assume that 75 percent of tobacco  
retailers already have some sort of  
training program for age and  
identification verification. We expect  
that some of those retailer training  
programs already meet the elements in  
the guidance, some retailers would  
update their training program to meet  
the elements in the guidance, and other  
retailers would develop a training  
program for the first time. Thus, we  
estimate that two-thirds of tobacco  
retailers would develop a training  
program that meets the elements in the  
guidance (66 percent of 410,000 =  
270,600).

The Tobacco Control Act gave FDA  
the authority to issue a regulation  
deeming all other products that meet the  
statutory definition of a tobacco product  
as subject to FDA regulatory authority  
("deeming") (section 901(b) of the  
Federal Food, Drug, and Cosmetic Act  
(FD&C Act). On May 10, 2016, FDA  
issued the deeming rule, extending  
FDA's tobacco product authority to  
other tobacco products (81 FR 28973). In  
the **Federal Register** of February, 26,  
2016 (81 FR 9862), FDA published the  
60-day notice requesting public  
comment on the proposed collection of  
information. Since FDA published the  
60-day notice before the deeming rule,  
FDA has adjusted the burdens in this  
information collection to reflect the  
expected increase in the number of  
affected retail establishments based on  
the publication of the deeming rule, as  
detailed below. We also estimate that  
there are approximately 5,000 to 10,000  
vape shops; we assume that 66 percent



of them, or 3,300 (= 66% × 5,000) of the low estimate, currently engage in retailing activities (Ref. 1) Two PRA related comments were received in response to the 60-day notice.

The two comments both identified additional training options that could be used to provide further educational

opportunities for tobacco retailers. These comments primarily relate more to the content and method of a retailer training program rather than the proposed collection of information associated with the current guidance document. At the same time, one comment was supportive of the

information collection activities associated with the current guidance document. FDA is supportive of training programs that assist retailers in complying with the tobacco control laws.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Develop training program .....	273,900	1	273,900	16	4,382,400
Develop written policy against sales to minors and employee acknowledgement .....	273,900	1	273,900	1	273,900
Develop internal compliance check program .....	273,900	1	273,900	8	2,191,200
Total .....					6,847,500

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN<sup>1</sup>

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
Training program .....	273,900	4	1,095,600	.25 (15 minutes) ....	279,300
Written policy against sales to minors and employee acknowledgement .....	273,900	4	1,095,600	.10 (6 minutes) .....	109,560
Internal compliance check program .....	273,900	2	547,800	.5 (30 minutes) .....	279,300
Total .....					668,160

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that the total burden for this collection will be 7,515,660 hours (6,847,500 reporting + 668,160 recordkeeping).

#### Reference

1. Burke, Don, "Trends & Insights in the Nicotine Delivery Category." Management Science Associates, Inc. Presentation at NATO Show, April 23, 2015. Accessed June 2015.

Dated: July 26, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016-18092 Filed 7-29-16; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2013-N-1428]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Electronic Drug Product Reporting of Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. **DATES:** Fax written comments on the collection of information by August 31, 2016.

**ADDRESSES:** To ensure that comments on the information collection are received,

OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). All comments should be identified with the title. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown Street, North Bethesda, MD 20852, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Guidance for Industry: Electronic Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act; Availability—OMB Control Number 0910—(NEW)**

On November 27, 2013, the President signed the Drug Quality and Security Act (DQSA) into law (Pub. L. 113-54).

The DQSA added a new section 503B to the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353b). Under section 503B(b), a compounder can register as an outsourcing facility with FDA. If the conditions outlined in section 503B(a) of the FD&C Act are satisfied, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from certain sections of the FD&C Act, including section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use) and section 505 (21 U.S.C. 355) (concerning the approval of human drug products under new drug applications or abbreviated new drug applications. Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice for drugs).

In the **Federal Register** of November 24, 2014 (79 FR 69857), FDA announced the availability of a revised draft guidance for industry entitled "Electronic Drug Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act." Under section 503B of the FD&C Act, and as described in the revised draft guidance, an outsourcing facility must, at the time of initial registration and twice each year, in June and December, submit to FDA a report identifying the drugs compounded by the facility during the previous six-month period. For each identified drug, the outsourcing facility must provide certain information, which is listed in section 503B(b)(2)(A)(ii) of the FD&C Act and in the revised draft guidance.

Each facility that elects to register as an outsourcing facility must report the following information to FDA for each product that it compounds:

- The active ingredient and strength of active ingredient per unit;
- the source of the active ingredient (bulk or finished drug);
- the National Drug Code (NDC) number of the source drug or bulk active ingredient, if available;
- the dosage form and route of administration;
- the package description;
- the number of individual units produced; and
- the NDC number of the final product, if assigned.

Compounded product information must be submitted to FDA electronically using the Structured Product Labeling (SPL) format and in accordance with section IV of the FDA guidance entitled "Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing," available at <http://www.fda.gov/Drugs/Guidance/ComplianceRegulatoryInformation/Guidances/ucm064994.htm>. Under the revised draft guidance, outsourcing facilities may request a waiver from the SPL electronic submission process by submitting a written request to FDA explaining why the use of electronic means is not reasonable for the person requesting the waiver.

In response to the November 24, 2014, **Federal Register** notice, FDA received three comments on the revised draft guidance. Comments that addressed the information collection provisions are identified and discussed here.

One comment expressed concern about being unable to submit a product report within the required 30-day reporting period because of the extensive amount of time to create a product report, especially for facilities with large product portfolios. The comment suggested that FDA did not recognize that each outsourcing facility will have numerous SPL entries into the electronic reporting system to make up a product report.

In consideration of the comment, we have increased our burden estimate as reflected in the tables 1 and 2. We have also explained in the guidance that there are ways to simplify the submission of product reporting information and reduce the number of responses and total burden of submitting product reporting information.

Initially, the creation of product report submissions can be time consuming, but submissions can be saved, updated, and resubmitted for subsequent reporting periods instead of creating a new submission each time. In addition, multiple strengths of the same drug, package sizes, and source NDC numbers can be consolidated into a single product submission in SPL.

Based on current data for outsourcing facilities, we estimate approximately 55 outsourcing facilities will submit to FDA an initial report identifying all drugs compounded in the facility in the previous 6 months. By our calculation,

each product's SPL submission is considered a separate response and therefore each facility's product report will include multiple responses. Taking into account that a particular product that is compounded into different strengths from different sources of active ingredient can be reported in a single SPL response, we estimate that the number of products reported per facility will average 220 products per facility. This estimate is based on current data in product reports.

Concerning the comment that each outsourcing facility will have numerous SPL entries, again we have revised our previous estimate to account for the fact that each product report will consist of multiple SPL responses per facility. We estimate that preparing and submitting this information electronically could take up to approximately 2 hours for each initial SPL response.

We also estimate that approximately 55 outsourcing facilities will submit to FDA a report twice each year identifying all drugs compounded at the facility in the previous 6 months. As described previously, we estimate on average 220 SPL responses per facility. We estimate that preparing and submitting this information electronically will take approximately one half hour per response. At the same time, we have reduced the burden for semi-annual product submissions reasoning that outsourcing facilities can save each SPL response once initially created and submitted. For subsequent reports, an outsourcing facility may resubmit the same file(s) after changing only the following data elements to appropriate values for the reporting period (along with other data as appropriate): RootID and version number (both SPL metadata); effective date (to identify the reporting period); and the number of units produced. Furthermore, if a product was not compounded during a particular reporting period, no SPL response needs be sent for that product during that reporting period.

Finally, we expect to receive no more than one waiver request from the electronic submission process for initial product reports and semi-annual reports, and estimate each request will take 1 hour to prepare and submit to FDA.

Therefore, we estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED INITIAL REPORTING BURDEN <sup>1</sup>

Information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of Initial Product Report .....	55	220	12,100	2	24,200
Waiver Request From Electronic Submission of Initial Product Report .....	1	1	1	1	1
<b>Total</b> .....					<b>24,201</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with the information collection.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission for June Product Report .....	55	220	12,100	0.5 (30 minutes) ....	6,050
Submission for December Product Report .....	55	220	12,100	0.5 (30 minutes) ....	6,050
Waiver Request From Electronic Submission of Product Reports.	1	1	1	1 .....	1
<b>Total</b> .....					<b>12,101</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with the information collection.

Dated: July 26, 2016.

**Jeremy Sharp,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2016–18048 Filed 7–29–16; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2016–N–0007]

### Food Safety Modernization Act Domestic and Foreign Facility Reinspection, Recall, and Importer Reinspection Fee Rates for Fiscal Year 2017

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2017 fee rates for certain domestic and foreign facility reinspections, failures to comply with a recall order, and importer reinspections that are authorized by the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). These fees are effective on October 1, 2016, and will remain in effect through September 30, 2017.

#### FOR FURTHER INFORMATION CONTACT:

Jason Lewis, Office of Resource Management, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rm. 2046,

Rockville, MD 20857, 301–796–5957, email: [Jason.Lewis@fda.hhs.gov](mailto:Jason.Lewis@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 107 of FSMA (Pub. L. 111–353) added section 743 to the FD&C Act (21 U.S.C. 379j–31) to provide FDA with the authority to assess and collect fees from, in part: (1) The responsible party for each domestic facility and the U.S. agent for each foreign facility subject to a reinspection, to cover reinspection-related costs; (2) the responsible party for a domestic facility and an importer who does not comply with a recall order, to cover food <sup>1</sup> recall activities associated with such order; and (3) each importer subject to a reinspection to cover reinspection-related costs (sections 743(a)(1)(A), (B), and (D) of the FD&C Act). Section 743 of the FD&C Act directs FDA to establish fees for each of these activities based on an estimate of 100 percent of the costs of each activity for each year (sections 743(b)(2)(A)(i), (ii), and (iv)), and these fees must be made available solely to pay for the costs of each activity for which the fee was incurred (section 743(b)(3)). These fees are effective on October 1, 2016, and will remain in effect through September 30, 2017. Section 743(b)(2)(B)(iii) of the FD&C Act directs FDA to develop a proposed set of guidelines in consideration of the burden of fee amounts on small businesses. As a first step in developing

these guidelines, FDA invited public comment on the potential impact of the fees authorized by section 743 of the FD&C Act on small businesses (76 FR 45818, August 1, 2011). The comment period for this request ended November 30, 2011. As stated in FDA's September 2011 "Guidance for Industry: Implementation of the Fee Provisions of Section 107 of the FDA Food Safety Modernization Act," (<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/FoodDefense/ucm274176.htm>), because FDA recognizes that for small businesses the full cost recovery of FDA reinspection or recall oversight could impose severe economic hardship, FDA intends to consider reducing certain fees for those firms. FDA does not intend to issue invoices for reinspection or recall order fees until FDA publishes a guidance document outlining the process through which firms may request a reduction in fees.

In addition, as stated in the September 2011 Guidance, FDA is in the process of considering various issues associated with the assessment and collection of importer reinspection fees. The fee rates set forth in this notice will be used to determine any importer reinspection fees assessed in FY 2017.

##### II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2017

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2017.

<sup>1</sup> The term "food" for purposes of this document has the same meaning as such term in section 201(f) of the FD&C Act (21 U.S.C. 321(f)).

In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology, and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2015

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of a full-time equivalent (FTE) or paid staff year for the relevant activity. This is done by dividing the total funds allocated to the elements of FDA primarily responsible for carrying out the activities for which fees are being collected by the total FTEs allocated to those activities. For the purposes of the reinspection and recall order fees authorized by section 743 of the FD&C Act (the fees that are the subject of this notice), primary responsibility for the activities for which fees will be collected rests with FDA's Office of Regulatory Affairs (ORA). ORA carries out inspections and other field-based activities on behalf of FDA's product centers, including the Center for Food Safety and Applied Nutrition (CFSAN) and the Center for Veterinary Medicine (CVM). Thus, as the starting point for estimating the full cost per direct work hour, FDA will use the total funds allocated to ORA for CFSAN and CVM related field activities. The most recent FY with available data was FY 2015. In that year, FDA obligated a total of \$666,722,326 for ORA in carrying out the CFSAN and CVM related field activities work, excluding the cost of inspection travel. In that same year, the number of ORA staff primarily conducting the CFSAN and CVM related field activities was 3,022 FTEs or paid staff years. Dividing \$666,722,326 by 3,022 FTEs results in an average cost of \$220,623 per paid staff year, excluding travel costs.

Not all of the FTEs required to support the activities for which fees will be collected are conducting direct work such as inspecting or reinspecting facilities, examining imports, or monitoring recalls. Data collected over a number of years and used consistently in other FDA user fee programs (e.g., under the Prescription Drug User Fee Act (PDUFA) and the Medical Device User Fee and Modernization Act (MDUFA)) show that every seven FTEs who perform direct FDA work require three indirect and supporting FTEs. These indirect and supporting FTEs function in budget, facility, human

resource, information technology, planning, security, administrative support, legislative liaison, legal counsel, program management, and other essential program areas. On average, two of these indirect and supporting FTEs are located in ORA or the FDA center where the direct work is being conducted, and one of them is located in the Office of the Commissioner. To get the fully supported cost of an FTE, FDA needs to multiply the average cost of an FTE by 1.43, to take into account the indirect and supporting functions. The 1.43 factor is derived by dividing the 10 fully supported FTEs by 7 direct FTEs. In FY 2015, the average cost of an FTE was \$220,623. Multiplying this amount by 1.43 results in an average fully supported cost of \$315,491 per FTE, excluding the cost of inspection travel.

To calculate an hourly rate, FDA must divide the average fully supported cost of \$315,491 per FTE by the average number of supported direct FDA work hours. See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR

Total number of hours in a paid staff year .....	2,080
Less:	
10 paid holidays .....	80
20 days of annual leave .....	160
10 days of sick leave .....	80
10 days of training .....	80
2 hours of meetings per week .....	80
Net Supported Direct FDA Work Hours Available for Assignments .....	1,600

Dividing the average fully supported cost of an FTE in FY 2015 (\$315,491) by the total number of supported direct work hours available for assignment (1,600) results in an average fully supported cost of \$197 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2015—the last FY for which data are available.

B. Adjusting FY 2015 Costs for Inflation To Estimate FY 2017 Costs

To adjust the hourly rate for FY 2017, FDA must estimate the cost of inflation in each year for FY 2016 and FY 2017. FDA uses the method prescribed for estimating inflationary costs under the PDUFA provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2016 inflation rate to be 2.0266; this rate was published in the FY 2016 PDUFA user fee rates notice in

the **Federal Register** of August 3, 2015 (80 FR 46028). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 1.5468 percent for FY 2017 and FDA intends to use this inflation rate to make inflation adjustments for FY 2017 for several of its user fee programs; the derivation of this rate is published in the **Federal Register** in the FY 2017 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2016 and 2017, therefore, is 3.6047 percent (1 plus 2.0266 percent times 1 plus 1.5468 percent).

Increasing the FY 2015 average fully supported cost per supported direct FDA work hour of \$197 (excluding inspection travel costs) by 3.6047 percent yields an inflationary adjusted estimated cost of \$204 per a supported direct work hour in FY 2017, excluding inspection travel costs. FDA will use this base unit fee in determining the hourly fee rate for reinspection and recall order fees for FY 2017 prior to including domestic or foreign travel costs as applicable for the activity.

In FY 2015, ORA spent a total of \$4,497,078 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's CFSAN and CVM field activities programs. The total ORA domestic travel costs spent is then divided by the 8,987 CFSAN and CVM domestic inspections, which averages a total of \$500 per inspection. These inspections average 32.14 hours per inspection. Dividing \$500 per inspection by 32.14 hours per inspection results in a total and an additional cost of \$16 per hour spent for domestic inspection travel costs in FY 2015. To adjust \$16 for inflationary increases in FY 2016 and FY 2017, FDA must multiply it by the same inflation factor mentioned previously in this document (1.036047), which results in an estimated cost of \$17 dollars per paid hour in addition to \$204 for a total of \$221 per paid hour (\$204 plus \$17) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2017 when domestic travel is required.

In FY 2015, ORA spent a total of \$2,521,216 on 269 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of \$9,373 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing \$9,373 per trip by 120 hours per trip results in a total and an additional cost of \$78 per paid hour spent for foreign inspection travel costs in FY 2015. To adjust \$78 for inflationary increases in FY 2016 and

FY 2017, FDA must multiply it by the same inflation factor mentioned previously in this document (1.036047), which results in an estimated cost of \$81 dollars per paid hour in addition to \$204 for a total of \$285 per paid hour (\$204 plus \$81) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2017 when foreign travel is required.

**TABLE 2—FSMA FEE SCHEDULE FOR FY 2017**

Fee category	Fee rates for FY 2017
Hourly rate if domestic travel is required .....	\$221
Hourly rate if foreign travel is required .....	285

### III. Fees for Reinspections of Domestic or Foreign Facilities Under Section 743(a)(1)(A)

#### A. What will cause this fee to be assessed?

The fee will be assessed for a reinspection conducted under section 704 of the FD&C Act (21 U.S.C. 374) to determine whether corrective actions have been implemented and are effective and compliance has been achieved to the Secretary of Health and Human Services' (the Secretary) (and, by delegation, FDA's) satisfaction at a facility that manufactures, processes, packs, or holds food for consumption necessitated as a result of a previous inspection (also conducted under section 704) of this facility, which had a final classification of Official Action Indicated (OAI) conducted by or on behalf of FDA, when FDA determined the non-compliance was materially related to food safety requirements of the FD&C Act. FDA considers such non-compliance to include non-compliance with a statutory or regulatory requirement under section 402 of the FD&C Act (21 U.S.C. 342) and section 403(w) of the FD&C Act (21 U.S.C. 343(w)). However, FDA does not consider non-compliance that is materially related to a food safety requirement to include circumstances where the non-compliance is of a technical nature and not food safety related (e.g., failure to comply with a food standard or incorrect font size on a food label). Determining when non-compliance, other than under sections 402 and 403(w) of the FD&C Act, is materially related to a food safety requirement of the FD&C Act may depend on the facts of a particular

situation. FDA intends to issue guidance to provide additional information about the circumstances under which FDA would consider non-compliance to be materially related to a food safety requirement of the FD&C Act.

Under section 743(a)(1)(A) of the FD&C Act, FDA is directed to assess and collect fees from "the responsible party for each domestic facility (as defined in section 415(b) (21 U.S.C. 350d(b))) and the United States agent for each foreign facility subject to a reinspection" to cover reinspection-related costs.

Section 743(a)(2)(A)(i) of the FD&C Act defines the term "reinspection" with respect to domestic facilities as "1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified non-compliance materially related to a food safety requirement of th[e] Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction."

The FD&C Act does not contain a definition of "reinspection" specific to foreign facilities. In order to give meaning to the language in section 743(a)(1)(A) of the FD&C Act to collect fees from the U.S. agent of a foreign facility subject to a reinspection, the Agency is using the following definition of "reinspection" for purposes of assessing and collecting fees under section 743(a)(1)(A), with respect to a foreign facility, "1 or more inspections conducted by officers or employees duly designated by the Secretary subsequent to such an inspection which identified non-compliance materially related to a food safety requirement of the FD&C Act, specifically to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction."

This definition allows FDA to fulfill the mandate to assess and collect fees from the U.S. agent of a foreign facility in the event that an inspection reveals non-compliance materially related to a food safety requirement of the FD&C Act, causing one or more subsequent inspections to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction. By requiring the initial inspection to be conducted by officers or employees duly designated by the Secretary, the definition ensures that a foreign facility would be subject to fees only in the event that FDA, or an entity designated to act on its behalf, has made the requisite identification at an initial inspection of non-compliance materially related to a food safety requirement of the FD&C Act. The definition of "reinspection-related costs" in section 743(a)(2)(B) of the FD&C Act relates to

both a domestic facility reinspection and a foreign facility reinspection, as described in section 743(a)(1)(A).

#### B. Who will be responsible for paying this fee?

The FD&C Act states that this fee is to be paid by the responsible party for each domestic facility (as defined in section 415(b) of the FD&C Act) and by the U.S. agent for each foreign facility (section 743(a)(1)(A) of the FD&C Act). This is the party to whom FDA will send the invoice for any fees that are assessed under this section.

#### C. How much will this fee be?

The fee is based on the number of direct hours spent on such reinspections, including time spent conducting the physical surveillance and/or compliance reinspection at the facility, or whatever components of such an inspection are deemed necessary, making preparations and arrangements for the reinspection, traveling to and from the facility, preparing any reports, analyzing any samples or examining any labels if required, and performing other activities as part of the OAI reinspection until the facility is again determined to be in compliance. The direct hours spent on each such reinspection will be billed at the appropriate hourly rate shown in table 2 of this document.

### IV. Fees for Non-Compliance With a Recall Order Under Section 743(a)(1)(B)

#### A. What will cause this fee to be assessed?

The fee will be assessed for not complying with a recall order under section 423(d) (21 U.S.C. 350l(d)) or section 412(f) of the FD&C Act (21 U.S.C. 350a(f)) to cover food recall activities associated with such order performed by the Secretary (and by delegation, FDA) (section 743(a)(1)(B) of the FD&C Act). Non-compliance may include the following: (1) Not initiating a recall as ordered by FDA; (2) not conducting the recall in the manner specified by FDA in the recall order; or (3) not providing FDA with requested information regarding the recall, as ordered by FDA.

#### B. Who will be responsible for paying this fee?

Section 743(a)(1)(B) of the FD&C Act states that the fee is to be paid by the responsible party for a domestic facility (as defined in section 415(b) of the FD&C Act) and an importer who does not comply with a recall order under section 423 or under section 412(f) of the FD&C Act. In other words, the party

paying the fee would be the party that received the recall order.

#### *C. How much will this fee be?*

The fee is based on the number of direct hours spent on taking action in response to the firm's failure to comply with a recall order. Types of activities could include conducting recall audit checks, reviewing periodic status reports, analyzing the status reports and the results of the audit checks, conducting inspections, traveling to and from locations, and monitoring product disposition. The direct hours spent on each such recall will be billed at the appropriate hourly rate shown in table 2 of this document.

#### *V. How must the fees be paid?*

An invoice will be sent to the responsible party for paying the fee after FDA completes the work on which the invoice is based. Payment must be made within 90 days of the invoice date in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Detailed payment information will be included with the invoice when it is issued.

#### *VI. What are the consequences of not paying these fees?*

Under section 743(e)(2) of the FD&C Act, any fee that is not paid within 30 days after it is due shall be treated as a claim of the U.S. Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

Dated: July 27, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016-18089 Filed 7-29-16; 8:45 am]

**BILLING CODE 4164-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

[Docket No. FDA-2016-N-0007]

### **Outsourcing Facility Fee Rates for Fiscal Year 2017**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2017 rates for the establishment and re-inspection fees related to entities that compound human drugs and elect to register as outsourcing facilities under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). The FD&C Act authorizes

FDA to assess and collect an annual establishment fee from outsourcing facilities, as well as a re-inspection fee for each re-inspection of an outsourcing facility. This document establishes the FY 2017 rates for the small business establishment fee (\$5,279), the non-small business establishment fee (\$16,852), and the re-inspection fee (\$15,837) for outsourcing facilities; provides information on how the fees for FY 2017 were determined; and describes the payment procedures outsourcing facilities should follow. These fee rates are effective October 1, 2016, and will remain in effect through September 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** For more information on human drug compounding and outsourcing facility fees, visit FDA's Web site at: <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/default.htm>.

*For questions relating to this notice:* Monica R. Vega, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE-14202J, Silver Spring, MD 20993-0002, 301-796-2127.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On November 27, 2013, President Obama signed the Drug Quality and Security Act (DQSA), legislation that contains important provisions relating to the oversight of compounding of human drugs. Title I of this law, the Compounding Quality Act, created a new section 503B in the FD&C Act (21 U.S.C. 353b). Under section 503B of the FD&C Act, a human drug compounder can become an "outsourcing facility."

Outsourcing facilities, as defined in section 503B(d)(4) of the FD&C Act, are facilities that meet all of the conditions described in section 503B(a), including registering with FDA as an outsourcing facility and paying an annual establishment fee. If the conditions of section 503B are met, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from three sections of the FD&C Act: (1) Section 502(f)(1) (21 U.S.C. 352(f)(1)) concerning the labeling of drugs with adequate directions for use; (2) section 505 (21 U.S.C. 355) concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs); and (3) section 582 (21 U.S.C. 360eee-1) concerning drug supply chain security requirements. Drugs compounded in outsourcing facilities are not exempt from the requirements of

section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) concerning current good manufacturing practice requirements for drugs.

Section 744K of the FD&C Act (21 U.S.C. 379j-62) authorizes FDA to assess and collect the following fees associated with outsourcing facilities: (1) An annual establishment fee from each outsourcing facility and (2) a re-inspection fee from each outsourcing facility subject to a re-inspection (see section 744K(a)(1) of the FD&C Act). Under statutorily defined conditions, a qualified applicant may pay a reduced small business establishment fee (see section 744K(c)(4) of the FD&C Act).

FDA announced in the **Federal Register** of November 24, 2014 (79 FR 69856), the availability of a final guidance for industry entitled "Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act." The guidance provides additional information on the annual fees for outsourcing facilities and adjustments required by law, re-inspection fees, how to submit payment, the effect of failure to pay fees, and how to qualify as a small business to obtain a reduction of the annual establishment fee. This guidance can be accessed on FDA's Web site at: <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM391102.pdf>.

##### **II. Fees for FY 2017**

##### *A. Methodology for Calculating FY 2017 Adjustment Factors*

##### **1. Inflation Adjustment Factor**

Section 744K(c)(2) of the FD&C Act specifies the annual inflation adjustment for outsourcing facility fees. The inflation adjustment has two components: One based on FDA's payroll costs and one based on FDA's non-payroll costs for the first three of the four previous fiscal years. The payroll component of the annual inflation adjustment is calculated by taking the average change in the FDA's per-full time equivalent (FTE) personnel compensation and benefits (PC&B) in the first three of the four previous fiscal years (see section 744K(c)(2)(A)(ii) of the FD&C Act). FDA's total annual spending on PC&B is divided by the total number of FTEs per fiscal year to determine the average PC&B per FTE.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first three of the four fiscal years preceding FY 2017. The 3-year average is 1.8759 percent.

TABLE 1—FDA PC&amp;BS EACH YEAR AND PERCENT CHANGE

Fiscal year	2013	2014	2015	3-Year average
Total PC&B .....	\$1,927,703,000	\$2,054,937,000	\$2,232,304,000	.....
Total FTE .....	13,974	14,555	15,484	.....
PC&B per FTE .....	\$137,949	\$141,184	\$144,168	.....
Percent change from previous year .....	1.1690%	2.3451%	2.1136%	1.8759%

Section 744K(c)(2)(A)(ii) of the FD&C Act specifies that this 1.8759 percent should be multiplied by the proportion of PC&B to total costs of an average FDA FTE for the same three fiscal years.

TABLE 2—FDA PC&amp;BS AS A PERCENT OF FDA TOTAL COSTS OF AN AVERAGE FTE

Fiscal year	2013	2014	2015	3-Year average
Total PC&B .....	\$1,927,703,000	\$2,054,937,000	\$2,232,304,000	.....
Total Costs .....	\$4,151,343,000	\$4,298,476,000	\$4,510,565,000	.....
PC&B Percent .....	46.4356%	47.8062%	49.4906%	47.9108%

The payroll adjustment is 1.8759 percent multiplied by 47.9108 percent, or 0.8988 percent.

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that the portion of the inflation adjustment for non-payroll costs for FY 2017 is equal to the average annual percent change in the Consumer Price Index (CPI) for urban consumers

(U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data, multiplied by the proportion of all non-PC&B costs to total costs of an average FDA FTE for the same period.

Table 2 provides the summary data for the percent change in the specified

CPI for U.S. cities. These data are published by the Bureau of Labor Statistics and can be found on its Web site: <http://data.bls.gov/cgi-bin/surveymost?cu>. The data can be viewed by checking the box marked "U.S. All items, 1982–84=100—CUUR0000SA0" and then selecting "Retrieve Data".

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN U.S. CITY AVERAGE CPI

Year	2013	2014	2015	3-Year average
Annual CPI .....	232.957	236.736	237.017	.....
Annual Percent Change .....	1.4648%	1.6222%	0.1187%	1.0686%

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that this 1.0686 percent should be multiplied by the proportion of all non-PC&B costs to total costs of an average FTE for the same three fiscal years. The proportion of all non-PC&B costs to total costs of an average FDA FTE for FYs 2013 to 2015 is 52.0892 percent (100 percent – 47.9108 percent = 52.0892 percent). Therefore, the non-pay adjustment is 1.0686 percent times 52.0892 percent, or 0.5566 percent.

The PC&B component (0.8988 percent) is added to the non-PC&B component (0.5566 percent), for a total inflation adjustment of 1.4554 percent (rounded). Section 744K(c)(2)(A)(i) of the FD&C Act specifies that one is added to that figure, making the inflation adjustment 1.014554.

Section 744K(c)(2)(B) of the FD&C Act provides for this inflation adjustment to be compounded after FY 2015. This factor for FY 2017 (1.4554 percent) is compounded by adding one to it, and then multiplying it by one plus the inflation adjustment factor for FY 2016 (4.0646 percent), as published in the

**Federal Register** of August 3, 2015 (80 FR 46007). The result of this multiplication of the inflation factors for the 2 years since FY 2015 (1.014554 × 1.040646) becomes the inflation adjustment for FY 2017. For FY 2017, the inflation adjustment is 5.5792 percent (rounded). We then add one, making the FY 2017 inflation adjustment factor 1.055792.

## 2. Small Business Adjustment Factor

Section 744K(c)(3) of the FD&C Act specifies that in addition to the inflation adjustment factor, the establishment fee for non-small businesses is to be further adjusted for a small business adjustment factor. Section 744K(c)(3)(B) of the FD&C Act provides that the small business adjustment factor is the adjustment to the establishment fee for non-small businesses that is necessary to achieve total fees equaling the amount that FDA would have collected if no entity qualified for the small business exception in section 744K(c)(4) of the FD&C Act. Additionally, section 744K(c)(5)(A) states that in establishing

the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year.

Therefore, to calculate the small business adjustment to the establishment fee for non-small businesses for FY 2017, FDA must estimate: (1) The number of outsourcing facilities that will pay the reduced fee for small businesses for FY 2017 and (2) the total fee revenue it would have collected if no entity had qualified for the small business exception (*i.e.*, if each entity that registers as an outsourcing facility for FY 2017 were to pay the inflation-adjusted fee amount of \$15,837).

With respect to (1), FDA estimates that seven entities will qualify for small business exceptions and will pay the reduced fee for FY 2017. With respect to (2), to estimate the total number of entities that will register as outsourcing facilities for FY 2017, FDA used data



submitted by outsourcing facilities through the voluntary registration process, which began in December 2013. Accordingly, FDA estimates that 72 outsourcing facilities, including seven small businesses, will be registered with FDA in FY 2017.

If the projected 72 outsourcing facilities paid the full inflation-adjusted fee of \$15,837, this would result in total revenue of \$1,140,264 in FY 2017 ( $\$15,837 \times 72$ ). However, seven of the entities that are expected to register as outsourcing facilities for FY 2017 are projected to qualify for the small business exception and to pay one-third of the full fee ( $\$5,279 \times 7$ ), totaling \$36,953 instead of paying the full fee ( $\$15,837 \times 7$ ), which would total \$110,859. This would leave a potential shortfall of \$73,906 ( $\$110,859 - \$36,953$ ).

Additionally, section 744K(c)(5)(A) of the FD&C Act states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year. FDA has determined that it is appropriate to credit excess fees collected from the last completed fiscal year, due to the inability to conclusively determine the amount of excess fees from the fiscal year that is in progress at the time this calculation is made. This crediting is done by comparing the small business adjustment factor for the last completed fiscal year, FY 2015 (\$1,134), to what would have been the small business adjustment factor for FY 2015 (\$324) if FDA had estimated perfectly.

The calculation for what the small business adjustment would have been if FDA had estimated perfectly begins by determining the total target collections ( $15,000 \times [\text{inflation adjustment factor}] \times [\text{number of registrants}]$ ). For the most recent complete fiscal year, FY 2015, this was \$995,020 ( $\$15,308 \times 65$ ). The actual FY 2015 revenue from the 65 total registrants (*i.e.*, 63 registrants paying FY 2015 non-small business establishment fee and two small business registrants) paying establishment fees is \$974,610. \$974,610 is calculated as follows: [FY 2015 Non-Small Business Establishment Fee]  $\times$  [total number of registrants in FY 2015 paying Non-Small Business Establishment Fee] + [FY 2015 Small Business Establishment Fee]  $\times$  [total number of small business registrants in FY 2015 paying Small Business Establishment Fee].  $\$15,308 \times 63 + \$5,103 \times 2 = \$974,610$ . This left a shortfall of \$20,410 from the estimated

total target collection amount (\$995,020 – \$974,610). \$20,410 divided by the total number of registrants in FY 2015 paying Standard Establishment Fee (63) equals \$324.

The difference between the small business adjustment factor used in FY 2015 and the small business adjustment factor that would have been used had FDA estimated perfectly, is \$810 ( $\$1,134 - \$324$ ). The \$810 is then multiplied by the number of actual registrants who paid the standard fee for FY 2015 (63), which provides us a total excess collection of \$51,025 (rounded down to the nearest \$5) in FY 2015.

When calculating the small business adjustment factor for FY 2016, FDA estimated the excess collection for FY 2015 because that fiscal year was not complete.<sup>1</sup> FDA estimated that the excess collection would be \$43,094 and credited that amount to the fee calculation for FY 2016. The difference between the estimated excess collection applied as a credit to FY 2016 revenue (\$43,094) and the actual excess collection of \$51,025 results in a small business adjustment credit for FY 2017 of \$7,931 ( $\$51,025 - \$43,094$ ).

Therefore, to calculate the small business adjustment factor for FY 2017, FDA subtracts \$7,931 from the projected shortfall of \$73,906 for FY 2017 to arrive at the numerator for the small business adjustment amount, which equals \$65,975. This number divided by 65 (the number of expected non-small businesses for FY 2017) is the small business adjustment amount for FY 2017, which is \$1,015.

#### *B. FY 2017 Rates for Small Business Establishment Fee, Non-Small Business Establishment Fee, and Re-Inspection Fee*

##### *1. Establishment Fee for Qualified Small Businesses<sup>2</sup>*

The amount of the establishment fee for a qualified small business fee is equal to \$15,000 multiplied by the inflation adjustment factor for that fiscal year, divided by three (see section

<sup>1</sup> FDA intends to eliminate this adjustment step from the calculation going forward by crediting fees from the most recent completed fiscal year.

<sup>2</sup> To qualify for a small business reduction of the FY 2017 establishment fee, entities had to submit their exception requests by April 30, 2016. See section 744K(c)(4)(B) of the FD&C Act. Although the time for requesting a small business exception for FY 2017 has now passed, an entity that wishes to request a small business exception for FY 2018 should consult section 744K(c)(4) of the FD&C Act and section III.D of FDA's guidance for industry entitled "Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act," which can be accessed on FDA's Web site at <http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm391102.pdf>.

744K(c)(4)(A) and (c)(1)(A) of the FD&C Act). The inflation adjustment factor for FY 2017 is 1.055792. See section II.A.1 for the methodology used to calculate the FY 2017 inflation adjustment factor. Therefore, the establishment fee for a qualified small business for FY 2017 is one third of \$15,837, which equals \$5,279 (rounded to the nearest dollar).

##### *2. Establishment Fee for Non-Small Businesses*

Under section 744K(c) of the FD&C Act, the amount of the establishment fee for a non-small business is equal to \$15,000 multiplied by the inflation adjustment factor for that fiscal year, plus the small business adjustment factor for that fiscal year, and plus or minus an adjustment factor to account for over- or under-collections due to the small business adjustment factor in the prior year. The inflation adjustment factor for FY 2017 is 1.055792. The small business adjustment amount for FY 2017 is \$1,015. See section II.A.2 for the methodology used to calculate the small business adjustment factor for FY 2017. Therefore, the establishment fee for a non-small business for FY 2017 is \$15,000 multiplied by 1.055792 plus \$1,015, which equals \$16,852 (rounded to the nearest dollar).

##### *3. Re-Inspection Fee*

Section 744K(c)(1)(B) of the FD&C Act provides that the amount of the FY 2017 re-inspection fee is equal to \$15,000, multiplied by the inflation adjustment factor for that fiscal year. The inflation adjustment factor for FY 2017 is 1.055792. Therefore, the re-inspection fee for FY 2017 is \$15,000 multiplied by 1.055792, which equals \$15,837 (rounded to the nearest dollar). There is no reduction in this fee for small businesses.

#### *C. Summary of FY 2017 Fee Rates*

TABLE 4—OUTSOURCING FACILITY FEES

Qualified Small Business Establishment Fee .....	\$5,279
Non-Small Business Establishment Fee .....	16,852
Re-inspection Fee .....	15,837

### **III. Fee Payment Options and Procedures**

#### *A. Establishment Fee*

Once an entity submits registration information and FDA has determined that the information is complete, the entity will incur the annual establishment fee. FDA will send an invoice to the entity, via email to the email address indicated in the

registration file, or via regular mail if email is not an option. The invoice will contain information regarding the obligation incurred, the amount owed, and payment procedures. A facility will not be registered as an outsourcing facility until it has paid the annual establishment fee under section 744K of the FD&C Act. Accordingly, it is important that facilities seeking to operate as outsourcing facilities pay all fees immediately upon receiving an invoice. If an entity does not pay the full invoiced amount within 15 calendar days after FDA issues the invoice, FDA will consider the submission of registration information to have been withdrawn and adjust the invoice to reflect that no fee is due.

Outsourcing facilities that registered in FY 2016 and wish to maintain their status as an outsourcing facility in FY 2017 must register during the annual registration period that lasts from October 1, 2016, to December 31, 2016. Failure to register and complete payment by December 31, 2016, will result in a loss of status as an outsourcing facility on January 1, 2017. Entities should submit their registration information no later than December 10, 2016, to allow enough time for review of the registration information, invoicing, and payment of fees before the end of the registration period.

#### B. Re-Inspection Fee

FDA will issue invoices for each re-inspection after the conclusion of the re-inspection, via email to the email address indicated in the registration file or via regular mail if email is not an option. Invoices must be paid within 30 days.

#### C. Fee Payment Procedures

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at <https://userfees.fda.gov/pay>. Once you search for your invoice, click "Pay Now" to be redirected to *Pay.gov*. Note that electronic payment options are based on the balance due. Payment by credit card is available for balances less than \$25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be drawn on U.S. bank accounts as well as U.S. credit cards.

2. *If paying with a paper check:* Checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration.

Payments can be mailed to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197-9000. If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314-418-4013).

3. *If paying with a wire transfer:* Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Dept of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., 14th Floor, Silver Spring, MD 20993-0002. The originating financial institution may charge a wire transfer fee. An outsourcing facility should ask its financial institution about the fee and add it to the payment to ensure that the order is fully paid. The tax identification number of FDA is 53-0196965.

Dated: July 27, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016-18093 Filed 7-29-16; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2016-N-1984]

#### Request for Nominations on the Tobacco Products Scientific Advisory Committee

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of a nonvoting member to represent the interests of tobacco growers to serve on the Tobacco Products Scientific Advisory Committee for the Center for Tobacco Products (CTP), notify FDA in writing. FDA is also requesting nominations for a nonvoting member to represent the interests of tobacco growers to serve on the Tobacco Products Scientific Advisory Committee, and an alternate to this representative. A nominee may either be self-nominated or nominated by an

organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

**DATES:** Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent the interests of tobacco growers must send a letter stating that interest to the FDA by *August 31, 2016* (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by August 31, 2016.

**ADDRESSES:** All statements of interest from industry organizations interested in participating in the selection process should be sent to Caryn Cohen (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives should be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal at: <https://www.accessdata.fda.gov/scripts/FACTRSportal/FACTRS/index.cfm> or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993-0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's Web site at: <http://www.fda.gov/AdvisoryCommittees/default.htm>.

**FOR FURTHER INFORMATION CONTACT:** Caryn Cohen, Office of Science, Center for Tobacco Products, Food and Drug Administration, Center for Tobacco Products, Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 1-877-287-1373 (choose Option 5), email: [TPSAC@fda.hhs.gov](mailto:TPSAC@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The Agency intends to add nonvoting industry representatives to the following advisory committee:

#### I. CTP Advisory Committee

##### *Tobacco Products Scientific Advisory Committee*

The Tobacco Products Scientific Advisory Committee (the Committee) advises the Commissioner of Food and Drugs (the Commissioner) or designee in discharging responsibilities related to the regulation of tobacco products. The Committee reviews and evaluates safety, dependence, and health issues relating to tobacco products and provides appropriate advice, information, and recommendations to the Commissioner.

## II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent the interests of tobacco growers should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent the interests of tobacco growers for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent the interests of tobacco growers.

## III. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting member to represent the interests of tobacco growers. Contact information, current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 27, 2016.

**Janice M. Soreth,**

*Acting Associate Commissioner, Special Medical Programs.*

[FR Doc. 2016-18085 Filed 7-29-16; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Opportunity to Co-sponsor an Office on Women's Health Awards Ceremony and Event for its 25th Anniversary

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office on Women's Health.

**ACTION:** Notice.

**SUMMARY:** Pursuant to 42 U.S.C. 300u, 42 U.S.C. 300u-2, and 42 U.S.C. 237a (3509 of the Patient Protection and Affordable Care Act), notice is given that the Office on Women's Health (OWH) is soliciting proposals from non-federal public and private sector entities to co-sponsor the OWH Anniversary Celebration event in the Washington, DC area in late September, 2016.

**DATES:** Representatives of eligible organizations should submit expressions of interest no later than 6:00 p.m. EST on August 16, 2016.

**ADDRESSES:** Expressions of interest should be directed electronically to [Valerie.Borden@hhs.gov](mailto:Valerie.Borden@hhs.gov) or mailed to the Office on Women's Health, Office of the Assistant Secretary for Health, Department of Health and Human Services, 200 Independence Avenue SW., Room 730F.3, Washington, DC 20201. Attention: Valerie Borden.

**FOR FURTHER INFORMATION CONTACT:** Questions may be directed to Valerie Borden, Office on Women's Health, 200 Independence Avenue SW, Room 730F.3, Washington, DC 20201. Email: [Valerie.Borden@hhs.gov](mailto:Valerie.Borden@hhs.gov).

**SUPPLEMENTARY INFORMATION:** The OWH was established in 1991 to improve the health of American women by advancing and coordinating a comprehensive women's health agenda throughout the Department of Health and Human Service (HHS). The OWH provides national leadership and coordination to improve the health of women and girls through policy, education, and model programs. The office fulfills its mission by advancing policy and issuing competitive contracts and grants to an array of community, academic, and other organizations at the national and community levels. This year marks the office's 25th anniversary.

The event will feature a panel discussion focusing on the future of women's health. It will also feature an award ceremony for organizations and partners who helped improve the health and well-being of women and girls in the U.S. over the past 25 years.

The co-sponsor will assist with the development of the substantive content

of the event and other event planning, coordination, and logistics in partnership with the OWH staff. In addition the co-sponsor will be responsible for the event venue and any food and beverages.

#### *Eligibility for Co-Sponsorship*

To be eligible, a potential co-sponsor shall:

1. Have a demonstrated understanding, commitment, and experience in improving the health of women and girls;
2. Participate substantively in the co-sponsored activity, not just provide funding or logistical support; and
3. Have an organizational or corporate mission that is consistent with OWH and HHS.

Each co-sponsorship proposal shall contain a description of: (1) The entity or organization's background and history, (2) its ability to satisfy the co-sponsorship criteria detailed above, and (3) its proposed involvement in the co-sponsored activity. The selected co-sponsoring organization(s) shall furnish the necessary personnel, materials, services, and facilities to administer its responsibility for the event. These duties will be outlined in a co-sponsorship agreement with OWH that will set forth the details of the co-sponsored activity, including the requirements that any fees collected by the co-sponsor shall be limited to the amount necessary to cover the co-sponsor's related meeting expenses.

**Evaluation Criteria:** After engaging in exploratory discussions with potential co-sponsors that respond to this notice, the OWH will select the co-sponsor or co-sponsors using the following evaluation criteria:

- (1) Qualifications and capability to fulfill co-sponsorship responsibilities;
- (2) Creativity related to enhancing the event;
- (3) Potential for reaching and generating attendees from among key stakeholders, including federal, state and local policymakers, other health officials, non-profits interested in women's health, and underserved/special populations;
- (4) Experience with events;
- (5) Past or current work specific to women's health;
- (6) Personnel names, professional qualifications, and specific expertise with event planning;
- (7) Availability and description of facilities to support the event, including office space, information technology, and telecommunication resources; and,
- (9) Proposed plan for managing an event with the OWH.

Expressions of interest should outline eligibility in response to the

qualifications bulleted above and be no more than two pages in length, single-spaced and 11 point font.

Dated: July 19, 2016.

**Nancy C. Lee,**

*Deputy Assistant Secretary for Health—  
Women's Health Director, Office on Women's  
Health.*

[FR Doc. 2016-18178 Filed 7-29-16; 8:45 am]

**BILLING CODE 4150-42-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2016-0440]

### Merchant Marine Personnel Advisory Committee; Vacancies

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for applications.

**SUMMARY:** The Coast Guard seeks applications for membership on the Merchant Marine Personnel Advisory Committee. This Committee advises the Secretary of the Department of Homeland Security on matters related to personnel in the U.S. merchant marine, including but not limited to training, qualifications, certification, documentation, and fitness standards.

**DATES:** Completed applications should reach the Coast Guard on or before September 30, 2016.

**ADDRESSES:** Applicants should send a cover letter expressing interest in an appointment to the Merchant Marine Personnel Advisory Committee that also identifies which membership category the applicant is applying under, along with a resume detailing the applicant's experience via one of the following methods:

- *By Email:* [davis.j.breyer@uscg.mil](mailto:davis.j.breyer@uscg.mil).
- *By Fax:* (202) 372-8382.
- *By Mail:* Davis J. Breyer, Alternate Designated Federal Officer, Merchant Marine Personnel Advisory Committee Commandant (CG-MMC-1), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Ave. SE., Washington, DC 20593-7509.

20593-7509.

#### FOR FURTHER INFORMATION CONTACT:

Davis J. Breyer, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee; telephone 202-372-1445 or email at [davis.j.breyer@uscg.mil](mailto:davis.j.breyer@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Merchant Marine Personnel Advisory Committee is a statutory federal advisory committee established in accordance with the provisions of the Federal Advisory Committee Act, (Title

5 U.S.C. Appendix) to advise the Secretary of the Department of Homeland Security on matters relating to personnel in the U.S. merchant marine, including but not limited to training, qualifications, certification, documentation, and fitness standards and other matters as assigned by the Commandant. The Committee shall also review and comment on proposed Coast Guard regulations and policies relating to personnel in the United States merchant marine, including training, qualifications, certification, documentation, and fitness standards; may be given special assignments by the Secretary and may conduct studies, inquiries, workshops, and fact finding in consultation with individuals and groups in the private sector and with State or local governments; and shall advise, consult with, and make recommendations reflecting its independent judgment to the Secretary. The Committee meets not less than twice each year. Its subcommittees and working groups may also meet intercessionally to consider specific tasks as required.

Each Merchant Marine Personnel Advisory Committee member serves a term of office of up to three years. Members may serve a maximum of two consecutive terms. All members serve without compensation from the Federal Government; however, upon request, they may receive travel reimbursement and per diem.

We will consider applications for the following six positions that will be vacant on June 1, 2017. To be eligible, you should have experience in one or more of the following areas of expertise:

- (1) One position for a licensed engineering officer who is licensed as a chief engineer, any horsepower;
- (2) one position for a pilot who represents the viewpoint of Merchant Marine pilots;
- (3) one position for a member who represents the viewpoint of shipping companies employed in ship operation management;
- (4) one position for an unlicensed seaman who represents the viewpoint of able bodied seamen; and
- (5) two positions for members who represent the viewpoint of maritime training institutions other than a state or federal academy.

Registered lobbyists are not eligible to serve on federal advisory committees in an individual capacity. See "Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions" (79 FR 47482, August 13, 2014). Registered lobbyists are lobbyists as defined in 2 U.S.C. 1602 who are required by 2

U.S.C. 1603 to register with the Secretary of the Senate and Clerk of the House of Representatives.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Davis J. Breyer, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee according to the instructions in the **ADDRESSES** section by the deadline in the **DATES** section of this notice. All email submittals will receive email receipt confirmation.

Dated: July 22, 2016.

**J. G. Lantz,**

*Director of Commercial Regulations and  
Standards, U.S. Coast Guard.*

[FR Doc. 2016-18112 Filed 7-29-16; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[CIS No. 2586-16; DHS Docket No. USCIS-2013-0001]

RIN 1615-ZB54

### Extension and Redesignation of Syria for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of the Syrian Arab Republic (Syria) for Temporary Protected Status (TPS) for 18 months, from October 1, 2016 through March 31, 2018, and redesignating Syria for TPS for 18 months, effective October 1, 2016 through March 31, 2018.

The extension allows TPS beneficiaries to retain TPS through March 31, 2018, so long as they continue to meet the eligibility requirements for TPS. The redesignation

of Syria allows additional individuals who have been continuously residing in the United States since August 1, 2016 to obtain TPS, if otherwise eligible. The Secretary has determined that an extension of the current designation and a redesignation of Syria for TPS are warranted because the ongoing armed conflict and other extraordinary and temporary conditions that prompted the 2015 TPS redesignation have not only persisted, but have deteriorated, and because the ongoing armed conflict in Syria and other extraordinary and temporary conditions would pose a serious threat to the personal safety of Syrian nationals if they were required to return to their country.

Through this Notice, DHS also sets forth procedures necessary for nationals of Syria (or aliens having no nationality who last habitually resided in Syria) either to: (1) Re-register under the extension if they already have TPS and to apply for renewal of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS); or, (2) submit an initial registration application under the redesignation and apply for an EAD.

For individuals who have already been granted TPS under the 2012 original Syria designation or under the 2013 or 2015 Syria redesignations, the 60-day re-registration period runs from August 1, 2016 through September 30, 2016. USCIS will issue new EADs with a March 31, 2018 expiration date to eligible Syria TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on September 30, 2016. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Syria for 6 months, through March 31, 2017, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on Employment Eligibility Verification (Form I-9) and E-Verify processes.

Under the redesignation, individuals who currently do not have TPS (or an initial TPS application pending) may submit an initial application during the 180-day initial registration period that runs from August 1, 2016 through January 30, 2017. In addition to demonstrating continuous residence in the United States since August 1, 2016 and meeting other eligibility criteria, initial applicants for TPS under this redesignation must demonstrate that

they have been continuously physically present in the United States since October 1, 2016, the effective date of this redesignation of Syria, before USCIS may grant them TPS.

TPS initial applications that were either filed during the 2013 redesignation or during the 2015 Syria redesignation and remain pending on August 1, 2016 will be treated as initial applications under this 2016 redesignation. Individuals who have a pending initial Syria TPS application will not need to file a new Application for Temporary Protected Status (Form I-821). DHS provides additional instructions in this Notice for individuals whose TPS applications remain pending and who would like to obtain an EAD valid through March 31, 2018.

**DATES:** *Extension of Designation of Syria for TPS:* The 18-month extension of the TPS designation of Syria is effective October 1, 2016, and will remain in effect through March 31, 2018. The 60-day re-registration period runs from August 1, 2016 through September 30, 2016.

*Redesignation of Syria for TPS:* The redesignation of Syria for TPS is effective October 1, 2016, and will remain in effect through March 31, 2018, a period of 18 months. The 180-day initial registration period for new applicants under the Syria TPS redesignation runs from August 1, 2016 through January 30, 2017.

**FOR FURTHER INFORMATION CONTACT:**

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at <http://www.uscis.gov/tps>.

- You can find specific information about this extension and redesignation of Syria for TPS by selecting “TPS Designated Country: Syria” from the menu on the left side of the TPS Web page. You can also contact Jerry Rigdon, Chief of the Waivers and Temporary Services Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquiries.

- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS

National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

- Further information will also be available at local USCIS offices upon publication of this Notice.

**SUPPLEMENTARY INFORMATION:**

**Table of Abbreviations**

BIA—Board of Immigration Appeals  
 DHS—Department of Homeland Security  
 DOS—Department of State  
 EAD—Employment Authorization Document  
 FNC—Final Nonconfirmation  
 Government—U.S. Government  
 IJ—Immigration Judge  
 INA—Immigration and Nationality Act  
 OHCHR—Office of the High Commissioner for Human Rights  
 OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices  
 SARG—Syrian Arab Republic Government  
 SAVE—USCIS Systematic Alien Verification for Entitlements Program  
 Secretary—Secretary of Homeland Security  
 TNC—Tentative Nonconfirmation  
 TPS—Temporary Protected Status  
 TTY—Text Telephone  
 UN—United Nations  
 UNHCR—United Nations High Commissioner for Refugees  
 UNICEF—United Nations Children’s Emergency Fund  
 USAID—U.S. Agency for International Development  
 USCIS—U.S. Citizenship and Immigration Services  
 WFP—World Food Programme  
 WHO—World Health Organization

**What is Temporary Protected Status (TPS)?**

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.

- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization, so long as they continue to meet the requirements of TPS.

- TPS beneficiaries may also be granted travel authorization as a matter of discretion.

- The granting of TPS does not result in or lead to permanent resident status.

- When the Secretary terminates a country’s TPS designation, beneficiaries return to the same immigration status they maintained before TPS, if any (unless that status has since expired or been terminated), or to any other lawfully obtained immigration status they received while registered for TPS.

**When was Syria designated for TPS?**

On March 29, 2012, the Secretary designated Syria for TPS based on

extraordinary and temporary conditions within that country that prevented Syrian nationals and those with no nationality who last resided in Syria from returning to Syria in safety. *See Designation of Syrian Arab Republic for Temporary Protected Status*, 77 FR 19026 (March 29, 2012), and correction at 77 FR 20046 (April 3, 2012); *see also* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C). In 2013, the Secretary both extended Syria's designation and redesignated Syria for TPS for 18 months through March 31, 2015. *See Extension and Redesignation of Syria for Temporary Protected Status*, 78 FR 36223 (Jun. 17, 2013). The 2013 redesignation of Syria for TPS added the ongoing armed conflict in Syria as an additional basis for TPS. In 2015, the Secretary both extended Syria's designation and redesignated Syria for TPS for 18 months through September 30, 2016. *See Extension and Redesignation of Syria for Temporary Protected Status*, 80 FR 245 (January 5, 2015). This announcement is the fourth designation of TPS for Syria and the third extension since the initial designation in 2012.

#### **What authority does the Secretary have to extend the designation of Syria for TPS?**

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate U.S. Government (Government) agencies, to designate a foreign state (or part thereof) for TPS if the Secretary finds that certain country conditions exist.<sup>1</sup> The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation

may be extended for an additional period of 6, 12 or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

#### **What is the Secretary's authority to redesignate Syria for TPS?**

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. *See* INA section 244(b)(1), 8 U.S.C. 1254a(b)(1); *see also* INA section 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that "the alien has been continuously physically present since the effective date of the most recent designation of the state") (emphasis added). This is one of numerous instances in which the Secretary, and prior to the establishment of DHS, the Attorney General, has simultaneously extended a country's TPS designation and redesignated the country for TPS. *See, e.g., Extension and Redesignation of Syria for Temporary Protected Status*, 78 FR 36223 (Jun. 17, 2013); *Extension and Redesignation of Sudan for Temporary Protected Status*, 78 FR 1872 (Jan. 9, 2013); *Extension and Redesignation of Haiti for Temporary Protected Status*, 76 FR 29000 (May 19, 2011); *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program*, 62 FR 16608 (Apr. 7, 1997) (discussing legal authority for redesignation of a country for TPS).

When the Secretary designates or redesignates a country for TPS, he also has the discretion to establish the date from which TPS applicants must demonstrate that they have been "continuously resid[ing]" in the United States. *See* INA section 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii). This discretion permits the Secretary to tailor the "continuous residence" date to offer TPS to the group of eligible individuals that the Secretary deems appropriate.

The Secretary has determined that the "continuous residence" date for applicants for TPS under the redesignation of Syria shall be August 1, 2016. Initial applicants for TPS under this redesignation must also show they have been "continuously physically present" in the United States since October 1, 2016, which is the effective date of the Secretary's redesignation of Syria. *See* INA section 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i). For each initial

TPS application filed under the redesignation, the final determination of whether the applicant has met the "continuous physical presence" requirement cannot be made until October 1, 2016. USCIS, however, will issue EADs, as appropriate, during the registration period in accordance with 8 CFR 244.5(b).

Why is the Secretary extending the TPS designation for Syria and simultaneously redesignating Syria for TPS through March 31, 2018?

Over the past year, DHS and the Department of State (DOS) have continued to review conditions in Syria. Based on this review and after consulting with DOS, the Secretary has determined that an 18-month extension and redesignation is warranted because the ongoing armed conflict and other extraordinary and temporary conditions that prompted the January 5, 2015 redesignation continue to exist. Furthermore, the Secretary has decided the conditions warrant changing the "continuous residence" date so as to provide TPS protection to eligible Syrian nationals who arrived between January 5, 2015 and August 1, 2016. The "continuous physical presence" date must be the effective date of the redesignation, which the Secretary has established as October 1, 2016, so that individuals granted TPS under the redesignation will have TPS for the same 18-month period through March 31, 2018 as TPS beneficiaries re-registering under the extension. *See* INA section 244(c)(1)(A)(i); 8 U.S.C. 1254a(c)(1)(A)(i).

Violent conflict and the deteriorating humanitarian crisis continue to pose significant risk throughout Syria. Hundreds of thousands have been killed as a result of ongoing violence. Concerns for health and safety have led to largescale civilian displacement within Syria and migrations to neighboring countries and Europe. As of May 2016, the U.S. Agency for International Development (USAID) reports that 13.5 million people worldwide are in need of humanitarian assistance as a result of armed conflict in Syria. In May 2016, the United Nations Special Envoy for Syria has estimated that as many as 400,000 individuals have been killed, and 1.5 million injured since the violence began in 2011. According to information from USAID, as of March 2016, the United Nations High Commissioner for Refugees (UNHCR) had registered 4.8 million refugees in neighboring countries, and 6.5 million people were internally displaced Syria.

Syria's lengthy civil conflict has resulted in high levels of food

<sup>1</sup> As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

insecurity, limited access to water and medical care, and massive destruction of Syria's infrastructure. Attacks against civilians, the use of chemical weapons and irregular warfare tactics, as well as forced conscription and use of child soldiers have intensified the humanitarian crisis. USAID reports reductions in agricultural production, widespread displacement, disruption of markets and transportation, elimination of bread subsidies, damage to infrastructure including mills and bakeries, and loss of livelihoods are contributing to unprecedented food insecurity in Syria. As of 2015, it was estimated that over 6.3 million people within Syria, as well as 3 million Syrian refugees in neighboring countries are in need of emergency food assistance. In late 2015, due to significant funding deficits, food assistance distributed by the United Nation's World Food Programme (WFP) and 37 other non-governmental organizations (NGOs) reduced the level of assistance provided to 1.3 million Syrian refugees by 50 percent. According to information from USAID, WFP continues to face funding shortages for its programs in 2016, and is currently providing monthly food assistance to 1.4 million refugees and over 4 million people inside Syria.

Water availability in Syria has decreased to less than 50 percent of its pre-civil war levels. United Nations Children's Emergency Fund (UNICEF) reported that in 2015 alone, as many as 5 million people living in cities and communities across the country have suffered the consequences of long and sometimes deliberate interruptions to their water supplies. Additionally, strikes against population centers in the course of military operations has resulted in wide-scale destruction of water supply networks and infrastructure. According to information from USAID, between January and March 2016, 16 million Syrians relied on water assistance from the International Committee of the Red Cross and the Syrian Arab Red Crescent for survival.

Water scarcity as a result of power outages and limited access to fuel has caused numerous health and financial issues for families in Damascus, Aleppo, the southern city of Dera'a, and other areas. According to information from USAID, UNICEF reported in May 2016 that fuel supplies to the Sulaiman Al-Halabi and Bab Alnerab pumping stations were cut off, thus depriving 2 million people access to clean water. Additionally, water prices have dramatically increased, with cities like Aleppo seeing upwards of a 3,000 percent increase in the cost of clean

water. Unable to afford the rising cost of limited clean water supplies, families rely on dirty water from unprotected and unregulated groundwater sources. As a result, UNICEF reports increased cases of typhoid, diarrhea, hepatitis, and other diseases in children and other at-risk populations.

Civilian health needs continue to rise as Syria's health system deteriorates. The World Health Organization (WHO) reports that 58 percent of public hospitals were either partially functional or completely destroyed as of September 2015. Syrian medical personnel and facilities have been repeatedly struck in the course of military operations, particularly Syrian government air operations.

In early 2015, the WHO reported that the conflict has significantly impacted the ability for NGOs to deliver medical aid into and throughout Syria. Between 2011 and April 2016, Physicians for Human Rights reports that 738 medical personnel have been killed and 259 medical facilities indiscriminately or deliberately attacked. The organization reports that government forces use "double tap" tactics, attacking a site and then attacking it again once first responders arrive. Physicians for Human Rights documented 122 attacks on medical facilities in 2015, the highest rate of attacks on hospitals since the start of the conflict. The Office of the High Commissioner for Human Rights (OHCHR) reported an increase in miscarriages, birth defects, and infant mortality. NGOs operating near major population centers, such as Aleppo, reported on outbreaks of cholera, typhoid, scabies and tuberculosis among the populations.

As of November 2015, Syria's civil war has caused over \$270 billion in damages to the country's infrastructure. An estimated 2.1 million homes, half of the country's hospitals, and over 7,000 schools have been destroyed due to the conflict. Population centers such as Raqqah, Homs, and Aleppo, valued for their strategic positions by the opposition, extremists, and government forces, have become targets of military operations from all sides of the conflict. For example, within the city of Kobane, after 4 months of fighting between Kurdish and Islamic State forces, over 3,200 buildings were damaged. In Aleppo, at least 14,000 structures were damaged or destroyed, mostly by government airstrikes, with an additional unknown number of buildings destroyed as a result of front line conflict.

The recruitment and use of child soldiers has become "commonplace" in the Syrian armed conflict according to

a 2015 United Nations report. Forced conscription has affected the Syrian population more broadly as the conflict persists into its 6th year. While mandatory military service is a longstanding practice in Syria, the government strengthened its enforcement measures in 2014 and 2015. High rates of draft-dodging, desertions, and defections have left the Syrian military lacking sufficient manpower. In response, the Assad regime has launched large-scale arrests of military-age men through raids and checkpoints. For example, over the course of a 4-day period in October 2014, more than 2,600 men were detained for service by government forces in the cities of Hama and Homs. Once detained, conscripts usually receive minimal training, and are often deployed to a frontline position within days of their arrest. Furthermore, conscripts have reported being held beyond the normal term of 18 months and forced to extend through multiple tours of duty.

Daily bombings of homes, marketplaces, schools, hospitals, and places of worship have become commonplace for Syrian civilians living in major cities. The use of barrel bombs by the Assad regime is an ongoing occurrence in major population centers. Human Rights Watch reports that the Syrian military has dropped dozens of barrel bombs a day on opposition-held neighborhoods in Aleppo, Idlib, Dara'a and elsewhere. Amnesty International reports that relentless aerial bombardment and shelling by Syrian government forces is magnifying the suffering of civilians trapped under siege and facing an escalating humanitarian crisis in the Eastern Ghouta region. Between January and June 2015, the report indicates, Syrian government forces carried out over 60 airstrikes that resulted in over 500 civilian deaths.

As of May 2016, nearly 11.3 million Syrians had been displaced from their homes since the beginning of the Syrian conflict, with over 1.2 million estimated to have been displaced in 2015 alone. According to the U.N. Office for the Coordination of Humanitarian Affairs, nearly 50 percent of displaced persons are children. Furthermore, an estimated 4.6 million Syrians live in over 127 "hard-to-reach" and 18 "besieged" locations within Syria, and are unlikely to receive humanitarian assistance. By May 2016, the United Nations and ground partners were only able to reach 11.7 percent and 64.9 percent of people in these locations, respectively. By the end of 2014, Syrians represented 43 percent of all internally displaced



persons worldwide. The Internal Displacement Monitoring Centre reports that in 2015, a family was displaced every minute as a result of the protracted civil war and conflict. The humanitarian crisis in Syria continues to deteriorate, and the escalation of the conflict indicates that there is no immediate possibility for safe return.

Based upon this review and after consultation with appropriate Government agencies, the Secretary finds that:

- The conditions that prompted the January 5, 2015 redesignation of Syria for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be ongoing armed conflict in Syria and, due to such conflict, requiring the return of Syrian nationals to Syria would pose a serious threat to their personal safety. *See* INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There continue to be extraordinary and temporary conditions in Syria that prevent Syrian nationals from returning to Syria in safety. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- It is not contrary to the national interest of the United States to permit Syrian nationals (and persons who have no nationality who last habitually resided in Syria) who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Syria for TPS should be extended for an additional 18-month period from October 1, 2016 through March 31, 2018. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- Based on current country conditions, Syria should be

simultaneously redesignated for TPS effective October 1, 2016 through March 31, 2018. *See* INA sections 244(b)(1)(A), (b)(1)(C), and (b)(2); 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C), and (b)(2).

- TPS applicants must demonstrate that they have continuously resided in the United States since August 1, 2016.

- The date by which TPS applicants must demonstrate that they have been continuously physically present in the United States is October 1, 2016, the effective date of the redesignation of Syria for TPS.

- There are approximately 5,800 current Syrian TPS beneficiaries who are expected to apply for re-registration and may be eligible to retain their TPS under the extension.

- It is estimated that an additional 2,500 individuals may file initial applications for TPS under the redesignation of Syria.

#### **Notice of Extension of the TPS Designation of Syria and Redesignation of Syria for TPS**

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that the conditions that prompted the redesignation of Syria for TPS in 2015 not only continue to be met, but have significantly deteriorated. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of these determinations, I am simultaneously extending the existing TPS designation of Syria for 18 months from October 1, 2016 through March 31, 2018, and redesignating Syria for TPS for the same 18-month period. *See* INA sections 244(b)(1)(A), (b)(1)(C), and (b)(2); 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C), and (b)(2). I have also determined that

eligible individuals must demonstrate that they have continuously resided in the United States since August 1, 2016. *See* INA section 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii).

**Jeh Charles Johnson,**

*Secretary.*

*I am currently a Syria TPS beneficiary. What should I do?*

If you filed a TPS application during the Syria TPS registration periods that ran from January 5, 2015 through March 6, 2015, and that application was approved prior to August 1, 2016, then you need to file a re-registration application under the extension if you wish to maintain TPS benefits through March 31, 2018. You must use the Application for Temporary Protected Status (Form I-821) to re-register for TPS. The 60-day open reregistration period will run from August 1, 2016 through September 30, 2016.

*I have a pending initial TPS application filed during the Syria TPS registration period that ran from January 5, 2015 through July 6, 2015. What should I do?*

If your TPS application is still pending on August 1, 2016, then you do *not* need to file a new Application for Temporary Protected Status (Form I-821). Pending TPS applications will be treated as initial applications under this re-designation. Therefore, if your TPS application is approved, you will be granted TPS through March 31, 2018. If you have a pending TPS application *and* you wish to have an EAD valid through March 31, 2018, please refer to Table 1 to determine whether you should file a new Application for Employment Authorization (Form I-765).

**TABLE 1—FORM AND EAD INFORMATION FOR PENDING TPS APPLICATIONS**

If . . .	And . . .	Then . . .
You requested an EAD during the previous initial registration periods for Syria TPS.	You received an EAD with Category C19 or A12.	You must file a new Application for Employment Authorization (Form I-765) with fee (or fee waiver request) if you wish to have a new EAD valid through March 31, 2018.
	You did not receive an EAD with Category C19 or A12.	You do not need to file a new Application for Employment Authorization (Form I-765). If your TPS application is approved, your Application for Employment Authorization (Form I-765) will be approved through March 31, 2018.
You did not request an EAD during the previous initial registration period for Syria TPS.	You wish to have an EAD valid through March 31, 2018.	You must file a new Application for Employment Authorization (Form I-765) with fee (or fee waiver request).
	You do not wish to have an EAD valid through March 31, 2018.	You do not need to file a new Application for Employment Authorization (Form I-765).

*I am not a TPS beneficiary, and I do not have a TPS application pending. What are the procedures for initial registration for TPS under the Syria redesignation?*

If you are not a Syria TPS beneficiary or do not have a pending TPS application with USCIS, you may submit your TPS application during the 180-day initial registration period that will run from August 1, 2016 through January 30, 2017.

#### **Required Application Forms and Application Fees To Register or Re-Register for TPS**

To register or re-register for TPS for Syria, an applicant must submit each of the following two applications:

1. Application for Temporary Protected Status (Form I-821).
  - If you are filing an initial application, you must pay the fee for the Application for Temporary Protected Status (Form I-821). See 8 CFR 244.2(f)(2) and 244.6 and information on initial filing on the USCIS TPS Web page at <http://www.uscis.gov/tps>.

- If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I-821). See 8 CFR 244.17. and

2. Application for Employment Authorization (Form I-765).

- If you are applying for initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I-765) only if you are age 14 through 65. No fee for the Application for Employment Authorization (Form I-765) is required if you are under the age of 14 or are 66 and older and applying for initial registration.

- If you are applying for re-registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I-765), regardless of your age.

- If you are not requesting an EAD, regardless of whether you are applying for initial registration or re-registration, you do not pay the fee for the Application for Employment Authorization (Form I-765).

You must submit both completed application forms together. If you are unable to pay for the application and/or biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I-912) or submitting a personal letter requesting a fee waiver, and by providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at <http://www.uscis.gov/tps>. Fees for the Application for

Temporary Protected Status (Form I-821), the Application for Employment Authorization (Form I-765), and biometric services are also described in 8 CFR 103.7(b)(1)(i).

#### **Biometric Services Fee**

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I-912) or by submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at <http://www.uscis.gov>. If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

#### **Refiling an Initial TPS Application After Receiving a Denial of a Fee Waiver Request**

If you request a fee waiver when filing your initial TPS application package and your request is denied, you may re-file your application packet before the initial filing deadline of January 30, 2017. If you submit your application with a fee waiver request before that deadline, but you receive a fee waiver denial and there are fewer than 45 days before the filing deadline (or the deadline has passed), you may still re-file your application within the 45-day period after the date on the USCIS fee waiver denial notice. Your application will not be rejected even if the filing deadline has passed, provided it is mailed within those 45 days and all other required information for the application is included. Note: If you wish, you may also wait to request an EAD and pay the Application for Employment Authorization (Form I-765) fee after USCIS grants you TPS, if you are found eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I-821) with the fee and the Application for Employment Authorization (Form I-765) without fee and without requesting an EAD.

#### **Re-Filing a TPS Re-Registration Application After Receiving a Denial of a Fee Waiver Request**

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can process the applications and issue EADs promptly. Filing early will also allow those

applicants who may receive denials of their fee waiver requests to have time to re-file their applications *before* the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to re-file by the re-registration deadline, the applicant may still re-file his or her application. This situation will be reviewed to determine whether the applicant has established good cause for late re-registration. However, applicants are urged to re-file within 45 days of the date on their USCIS fee waiver denial notice, if at all possible. See INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at <http://www.uscis.gov/tps>. Note: As previously stated, although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, the applicant may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I-765) fee, until after USCIS has approved the individual's TPS re-registration, if he or she is eligible.

#### **Mailing Information**

Mail your application for TPS to the proper address in Table 2.

TABLE 2—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service.	USCIS, Attn: TPS Syria, P.O. Box 6943, Chicago, IL 60680-6943.
You are using a non-U.S. Postal Service delivery service.	USCIS, Attn: TPS Syria, 131 S. Dearborn 3rd Floor, Chicago, IL 60603-5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD, or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate address in Table 2. When submitting a re-registration application and/or requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will aid in the verification of your grant of TPS and processing of your application, as USCIS may not have received records of your grant of TPS by either the IJ or the BIA.

## E-Filing

You cannot electronically file your application when re-registering or submitting an initial registration for Syria TPS. Please mail your application to the mailing address listed in Table 2.

## Supporting Documents

The filing instructions on the Application for Temporary Protected Status (Form I-821) list all the documents needed to establish basic eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS Web site at [www.uscis.gov/tps](http://www.uscis.gov/tps) under "Syria."

*Do I need to submit additional supporting documentation?*

If one or more of the questions listed in Part 4, Question 2 of the Application for Temporary Protected Status (Form I-821) applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation.

## Employment Authorization Document (EAD)

*How can I obtain information on the status of my EAD request?*

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800-375-5283 (TTY 800-767-1833). If your Application for Employment Authorization (Form I-765) has been pending for more than 90 days and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at <https://infopass.uscis.gov>. However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

*Am I eligible to receive an automatic 6-month extension of my current EAD through March 31, 2017?*

Provided that you currently have TPS under the Syria designation, this Notice automatically extends your EAD by 6 months if you:

- Are a national of Syria (or an alien having no nationality who last habitually resided in Syria);
- Received an EAD under the last extension or redesignation of TPS for Syria; and
- Have an EAD with a marked expiration date of September 30, 2016, bearing the notation "A-12" or "C-19" on the face of the card under "Category."

Although this Notice automatically extends your EAD through March 31, 2017, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

*When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I-9)?*

You can find a list of acceptable document choices on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I-9). You can find additional detailed information on the USCIS I-9 Central Web page at <http://www.uscis.gov/I-9Central>. Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I-9). Within 3 days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). Or you may present an acceptable receipt for List A, List B, or List C documents as described in the Form I-9 Instructions. An EAD is an acceptable document under "List A." Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of September 30, 2016, and states "A-12" or "C-19" under "Category," it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I-9) through March 31, 2017 (see the subsection titled "*How do my employer and I complete the Employment Eligibility Verification (Form I-9) using an automatically extended EAD for a new job?*" for further information). To minimize confusion over this extension at the time of hire, you should explain to your employer that USCIS has automatically extended your EAD through March 31, 2017. You may also show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through March 31, 2017. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, a combination of

one selection from List B and one selection from List C, or a valid receipt.

*What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?*

Even though EADs with an expiration date of September 30, 2016, that state "A-12" or "C-19" under "Category" have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once March 31, 2017 is reached to meet its responsibilities for Employment Eligibility Verification (Form I-9). Your employer may need to reinspect your automatically extended EAD to check the expiration date and code to record the updated expiration date on your Form I-9 if he or she did not keep a copy of this EAD when you initially presented it. However, your employer does not need a new document to reverify your employment authorization until March 31, 2017, the expiration date of the automatic extension. Instead, you and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I-9) (see the subsection titled "*What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended?*" for further information). In addition, you may also show this **Federal Register** Notice to your employer to explain what to do for *Employment Eligibility Verification* (Form I-9).

By March 31, 2017, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any document from List A or any document from List C on Employment Eligibility Verification (Form I-9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Form I-9 Instructions. Your employer should complete either Section 3 of the Employment Eligibility Verification (Form I-9) originally completed for you or, if this Section has already been completed or if the version of Employment Eligibility Verification (Form I-9) has expired (check the date in the upper right-hand corner of the form), complete Section 3 of a new Employment Eligibility Verification (Form I-9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt.

*Can my employer require that I provide any other documentation to prove my status, such as proof of my Syrian citizenship?*

No. When completing Employment Eligibility Verification (Form I-9), including re-verifying employment authorization, employers must accept any documentation that appears on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I-9) that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the "Lists of Acceptable Documents." Therefore, employers may not request proof of Syrian citizenship or proof of re-registration for TPS when completing Employment Eligibility Verification (Form I-9) for new hires or reverifying the employment authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such EADs as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. Refer to the Note to Employees section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

*What happens after March 31, 2017, for purposes of employment authorization?*

After March 31, 2017, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will issue new EADs to eligible TPS re-registrants who request them. These new EADs will have an expiration date of March 31, 2018, and can be presented to your employer for completion of Employment Eligibility Verification (Form I-9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I-9).

*How do my employer and I complete Employment Eligibility Verification (Form I-9) using an automatically extended EAD for a new job?*

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I-9) for a new job prior to March 31, 2017, you and your employer should do the following:

1. For Section 1, you should:
  - a. Check "An alien authorized to work";

- b. Write your alien number (USCIS number or A-number) in the first space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix); and

- c. Write the automatically extended EAD expiration date (March 31, 2017) in the second space.

2. For Section 2, employers should record the:

- a. Document title;
- b. Document number; and
- c. Automatically extended EAD expiration date (March 31, 2017).

By March 31, 2017, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I-9).

*What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended?*

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job, but that EAD has now been automatically extended, your employer may need to reinspect your automatically extended EAD if your employer does not have a copy of the EAD on file, and you and your employer should correct your previously completed Employment Eligibility Verification (Form I-9) as follows:

1. For Section 1, you should:
  - a. Draw a line through the expiration date in the second space;
  - b. Write "March 31, 2017" above the previous date;
  - c. Write "TPS Ext." in the margin of Section 1; and
  - d. Initial and date the correction in the margin of Section 1.
2. For Section 2, employers should:
  - a. Draw a line through the expiration date written in Section 2;
  - b. Write "March 31, 2017" above the previous date;
  - c. Write "TPS Ext." in the margin of Section 2; and
  - d. Initial and date the correction in the margin of Section 2.

By March 31, 2017, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

*If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiration" alert for an automatically extended EAD?*

E-Verify automated the verification process for employees whose TPS was automatically extended in a **Federal Register** Notice. If you have an employee who is a TPS beneficiary who

provided a TPS-related EAD when he or she first started working for you, you will receive a "Work Authorization Documents Expiring" case alert when the auto-extension period for this EAD is about to expire. By March 31, 2017, employment authorization must be reverified in Section 3. Employers should not use E-Verify for reverification.

#### Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888-464-4218 (TTY for the hearing impaired is at 877-875-6028) or email USCIS at [I-9Central@dhs.gov](mailto:I-9Central@dhs.gov). Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (I-9 and E-Verify), employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 800-255-8155 (TTY 800-237-2515), which offers language interpretation in numerous languages, or email OSC at [oscrt@usdoj.gov](mailto:oscrt@usdoj.gov).

#### Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888-897-7781 (TTY for the hearing impaired is at 877-875-6028) or email at [I-9Central@dhs.gov](mailto:I-9Central@dhs.gov). Calls are accepted in English, Spanish and many other languages. Employees or applicants may also call the OSC Worker Information Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Employment Eligibility Verification (Form I-9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the List of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee,

or an acceptable List A, List B, or List C receipt as described in the *Employment Eligibility Verification* (Form I-9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I-9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of "Tentative Nonconfirmation" (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I-9) differs from Federal or State government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay or take any adverse action against an employee based on the employee's decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY for the hearing impaired is at 877-875-6028). To report an employer for discrimination in the E-Verify process based on citizenship or immigration status, or based on national origin, contact OSC's Worker Information Hotline at 800-255-7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I-9) and E-Verify procedures is available on the OSC Web site at <http://www.justice.gov/crt/about/osc/> and the USCIS Web site at <http://www.dhs.gov/e-verify>.

#### Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal government agencies must follow the guidelines laid out by the Federal government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples of such documents are:

(1) Your unexpired EAD that has been automatically extended, or your EAD that has not expired;

(2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;

(3) A copy of your Application for Temporary Protected Status Notice of Action (Form I-797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Notice of Action (Form I-797), if you received one from USCIS; and/or

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections or make an appointment can be found at the SAVE Web site at <http://www.uscis.gov/save>, then by choosing "For Benefit Applicants" from the menu on the right and then selecting "Questions about Your Records?"

[FR Doc. 2016-17933 Filed 7-29-16; 8:45 am]

BILLING CODE 9111-97-P

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

[FWS-HQ-ES-2016-N114; 4500030115]

#### Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Review of Orangutan

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of initiation of review; request for information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are initiating a 5-year status review under the Endangered Species Act of 1973, as amended (Act),

of the orangutan. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review of the species.

**DATES:** To ensure consideration, we are requesting submission of new information no later than September 30, 2016. However, we will continue to accept new information about any listed species at any time.

**ADDRESSES:** Please submit your information in writing by any one of the following methods:

- *U.S. mail:* Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041;
- *Hand-delivery:* Fish and Wildlife Service at the above address; or
- *Email:* [es\\_foreignspecies@fws.gov](mailto:es_foreignspecies@fws.gov).

For more about submitting information, see "Request for Information" in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041; telephone 703-358-2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:** We are initiating a 5-year status review under the Act of the orangutan (*Pongo pygmaeus*), which is listed as endangered (June 2, 1970; 35 FR 8491). A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review of the species.

#### Why do we conduct a 5-year review?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to <http://www.fws.gov/endangered/what-we-do/recovery->

[overview.html](#), scroll down to “Learn More about 5-Year Reviews,” and click on our factsheet.

### What information do we consider in our review?

A 5-year review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year review and will also be useful in evaluating the ongoing recovery programs for the species.

### Request for Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See “What information do we consider in our review?” for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

### Public Availability of Submissions

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

### Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 13, 2016.

**Gary Frazer,**

*Assistant Director—Ecological Services, U.S. Fish and Wildlife Service.*

[FR Doc. 2016–18096 Filed 7–29–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–ES–2016–N126; 40120–1112–0000–F2]**

### Receipt of Applications for Endangered Species Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

**DATES:** We must receive written data or comments on the applications at the address given below by *August 31, 2016*.

**ADDRESSES:** Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Karen Marlowe, Acting Permit Coordinator).

**FOR FURTHER INFORMATION CONTACT:** Karen Marlowe, Acting 10(a)(1)(A) Permit Coordinator, telephone 205–726–2667; facsimile 205–726–2479.

**SUPPLEMENTARY INFORMATION:** The public is invited to comment on the following applications for permits to

conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17. This notice is provided under section 10(c) of the Act.

If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service’s Regional Office (see **ADDRESSES**) or send them via electronic mail (email) to [permitsR4ES@fws.gov](mailto:permitsR4ES@fws.gov). Please include your name and return address in your email message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to the Fish and Wildlife Service office listed above (see **ADDRESSES**).

Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### Permit Applications

*Permit Application Number: TE 40523A–1*

*Applicant:* David H. Nelson, University of South Alabama, Mobile, AL.

The applicant requests renewal and amendment of his current permit to add authorization to take (draw blood) for DNA analyses and continue take (trap, hand-capture, collect tail snips, measure, mark, and attach scientific devices) of Alabama red-bellied turtles (*Pseudemys alabamensis*) in Alabama and Mississippi for scientific research purposes.

*Permit Application Number: TE 060988–3*

*Applicant:* Fort Jackson, Department of the Army, Fort Jackson, SC.

The applicant requests renewal of the current permit to continue take (construct and monitor nest cavities and restrictors, capture, band, and translocate) red-cockaded woodpeckers (*Picoides borealis*) at Fort Jackson, South Carolina, and as directed by the

U.S. Fish and Wildlife Service for enhancement of propagation and survival of the species.

**Permit Application Number:** TE 31141A-2

**Applicant:** Tennessee Wildlife Resources Agency, Nashville, TN.

The applicant requests renewal of the current permit to continue take (humane euthanasia) of gray bats (*Myotis grisescens*) and Indiana bats (*Myotis sodalis*) for white-nose syndrome surveillance and testing purposes.

**Permit Application Number:** TE 009638-11

**Applicant:** Appalachian Technical Services, Inc., Wise, VA.

The permittee requests amendment of their current permit to add authorization to take (capture, handle, identify, mark, and release) Big Sandy crayfish (*Cambarus callainus*), Guyandotte crayfish (*Cambarus veteranus*), clubshell (*Pleurobema clava*), Cumberland elktoe (*Alasmidonta atropurpurea*), fluted kidneyshell (*Ptychobranhus subtentum*), sheepsnose mussel (*Plethobasus cyphyus*), snuffbox mussel (*Epioblasma triquetra*), slabside pearl mussel (*Pleurobema dolabelloides*), orangefoot pimpleback (*Plethobasus cooperianus*), fat pocketbook (*Potamilus capax*), purple cat's paw (*Epioblasma obliquata obliquata*), rabbitsfoot (*Quadrula cylindrica* ssp. *cylindrica*), northern riffleshell (*Epioblasma torulosa rangiana*), ring pink (*Obovaria retusa*), and Cumberlandian combshell (*Epioblasma brevidens*) and take (capture via seining and electroshocking, handle, identify, and release) Kentucky arrow darter (*Etheostoma sagitta spilatum*) for presence/absence surveys in Kentucky, Tennessee, Virginia, and West Virginia.

**Permit Application Number:** TE 42183A-1

**Applicant:** Eglin Air Force Base, Niceville, FL.

The applicant requests renewal of the current permit to continue take (construct and monitor nest cavities and restrictors, capture, band, and translocate) red-cockaded woodpeckers (*Picoides borealis*) at Eglin Air Force Base and as directed by the U.S. Fish and Wildlife Service for enhancement of propagation and survival of the species.

**Permit Application Number:** TE 00868C-0

**Applicant:** Fred C. Shaffner, University of Turabo, Gurabo, PR.

The applicant requests a permit to take (capture with mist-nets, band, and

release) Puerto Rican nightjar (*Caprimulgus noctitherus*) and yellow-shouldered blackbird (*Agelaius xanthomus*) for presence/absence surveys and to mark birds for future population monitoring purposes.

**Permit Application Number:** TE 33465A-1

**Applicant:** U.S. Forest Service, Montgomery, AL.

The applicant requests renewal of the current permit to continue take (construct and monitor nest cavities and restrictors, capture, band, and translocate) red-cockaded woodpeckers (*Picoides borealis*) on national forests in the State of Alabama and as directed by the U.S. Fish and Wildlife Service for enhancement of propagation and survival of the species.

**Permit Application Number:** TE 824723-9

**Applicant:** Reed Bowman, Archbold Biological Station, Lake Placid, FL.

The applicant requests renewal of the current permit to continue take (construct and monitor nest cavities and restrictors, capture, band, draw blood, salvage nonviable eggs, and translocate) red-cockaded woodpeckers (*Picoides borealis*), take (capture, band, radio-tag, draw blood, take feathers, treat with Ivermectin) Florida scrub jays (*Aphelocoma coerulescens*), and take (capture, band, draw blood, salvage unhatched eggs) Florida grasshopper sparrow (*Ammodramus savannarum floridanus*) in Florida for scientific research purposes.

Dated: July 22, 2016.

**Steven Bekkerus,**

*Acting Deputy Assistant Regional Director, Ecological Services, Southeast Region.*

[FR Doc. 2016-18180 Filed 7-29-16; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS-R2-ES-2016-N120;  
FXES11120200000-167-FF02ENEH00]**

#### Receipt of Incidental Take Permit Applications for Participation in the Amended Oil and Gas Industry Conservation Plan for the American Burying Beetle in Oklahoma

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for public comments.

**SUMMARY:** Under the Endangered Species Act, as amended (Act), we, the U.S. Fish and Wildlife Service, invite

the public to comment on incidental take permit applications for take of the federally listed American burying beetle resulting from activities associated with the geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure within Oklahoma. If approved, the permits would be issued under the approved *Amended Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP).

**DATES:** To ensure consideration, written comments must be received on or before August 31, 2016.

**ADDRESSES:** You may obtain copies of all documents and submit comments on the applicant's ITP application by one of the following methods. Please refer to the permit number when requesting documents or submitting comments.

○ *U.S. Mail:* U.S. Fish and Wildlife Service, Division of Endangered Species—HCP Permits, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

○ *Electronically:* fw2\_hcp\_permits@fws.gov.

#### FOR FURTHER INFORMATION CONTACT:

Marty Tuegel, Branch Chief, by U.S. mail at: U.S. Fish and Wildlife Service, Environmental Review Division, P.O. Box 1306, Room 6034, Albuquerque, NM 87103; or by telephone at 505-248-6651.

#### SUPPLEMENTARY INFORMATION:

##### Introduction

Under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*; Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on incidental take permit (ITP) applications for take of the federally listed American burying beetle (*Nicrophorus americanus*) resulting from activities associated with geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma. If approved, the permit would be issued to the applicant under the *Amended Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP). The original ICP was approved on May 21, 2014 (publication of the FONSI notice was on July 25,



2014; 79 FR 43504). The draft amended ICP was made available for comment on March 8, 2016 (81 FR 12113), and approved on April 13, 2016. The ICP and the associated environmental assessment/finding of no significant impact are available on the Web site at <http://www.fws.gov/southwest/es/oklahoma/ABBICP>. However, we are no longer taking comments on these finalized, approved documents.

#### Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following applications under the ICP, for incidental take of the federally listed ABB. Please refer to the appropriate permit number (*e.g.*, TE-123456) when requesting application documents and when submitting comments. Documents and other information the applicants have submitted with their applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

#### Permit TE51880B

*Applicant:* LINN Operating, Inc., Oklahoma City, OK.

Applicant requests an amended permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

#### Permit TE54740B

*Applicant:* Newfield Exploration Mid-Continent, Inc., Tulsa, OK.

Applicant requests an amended permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

#### Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you

should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

#### Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

**Joy E. Nicholopoulos,**

*Acting Regional Director, Southwest Region.*

[FR Doc. 2016-18184 Filed 7-29-16; 8:45 am]

**BILLING CODE 4333-15-P**

#### INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-825-826 (Third Review)]

#### Certain Polyester Staple Fiber From Korea and Taiwan: Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the antidumping duty orders on certain polyester staple fiber from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Effective August 1, 2016. To be assured of consideration, the deadline for responses is August 31, 2016. Comments on the adequacy of responses may be filed with the Commission by October 14, 2016.

#### FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-

impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

*Background:* On May 25, 2000, the Department of Commerce (Commerce) issued antidumping duty orders on imports of certain polyester staple fiber from Korea and Taiwan (65 FR 33807). Following first five-year reviews by Commerce and the Commission, effective April 3, 2006, Commerce issued a continuation of the antidumping duty orders on imports of certain polyester staple fiber from Korea and Taiwan (71 FR 16558). Following second five-year reviews by Commerce and the Commission, effective September 30, 2011, Commerce issued a continuation of antidumping duty orders on imports of certain polyester staple fiber from Korea and Taiwan (76 FR 60802). The Commission is now conducting third reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission’s Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission’s determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

*Definitions:* The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) *The Subject Countries* in these reviews are Korea and Taiwan.

(3) *The Domestic Like Product* is the domestically produced product or

products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission found that there were two *Domestic Like Products* corresponding to (1) low-melt fiber and (2) conventional polyester staple fiber (all subject polyester staple fiber except for low-melt fiber). However, the Commission made a negative determination with respect to low-melt fiber. One Commissioner defined the *Domestic Like Product* differently in the original determinations. In its full first five-year review determinations and its expedited second five-year review determinations, the Commission defined the *Domestic Like Product* to be all certain conventional polyester staple fiber, coextensive with the scope of the orders under review.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined two *Domestic Industries*: (1) All domestic producers of low-melt fiber and (2) all domestic producers of conventional polyester staple fiber. However, the Commission made a negative determination with respect to low-melt fiber in the original investigations. One Commissioner defined the *Domestic Industry* differently in the original determinations. In its full first five-year review determinations and its expedited second five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of certain conventional polyester staple fiber, coextensive with the scope of the orders under review.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the proceeding and public service list:** Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing

the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule at § 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list:** Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification:** Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices,

and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

**Written submissions:** Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 31, 2016. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 14, 2016. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at <http://edis.usitc.gov>, elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–364, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

**Inability to provide requested information:** Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall

notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

*Information To Be Provided in Response to This Notice of Institution:* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of

imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2010.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit,

(iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for

downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2010, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016-17660 Filed 7-29-16; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-718 (Fourth Review)]

### Glycine From China; Institution of a Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty order on glycine from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** *Effective:* August 1, 2016. To be assured of consideration, the deadline for responses is August 31, 2016. Comments on the adequacy of responses may be filed with the Commission by October 14, 2016.

#### FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On March 29, 1995, the Department of Commerce (Commerce) issued an antidumping duty order on imports of glycine from China (60 FR 16116). Following first five-year reviews by Commerce and the Commission, effective July 25, 2000, Commerce issued a continuation of the antidumping duty order on imports of glycine from China (65 FR 45752). Following second five-year reviews by Commerce and the Commission, effective November 15, 2005, Commerce issued a second continuation of the antidumping duty order on imports of glycine from China (70 FR 69316). Following the third five-year reviews by Commerce and the Commission, effective September 19, 2011, Commerce issued a continuation of the antidumping duty order on imports of glycine from China (76 FR 57951). The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to

continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as all glycine. In its expedited first and second five-year review determinations and its full third five-year review determination, the Commission continued to define the *Domestic Like Product* as glycine of all purity levels, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its first and second expedited five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of glycine.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the proceeding and public service list.**—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as

provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule at § 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.**—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification.**—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information

submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

**Written submissions.**—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 31, 2016. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule at § 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 14, 2016. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at <http://edis.usitc.gov>, elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 16-5-363, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

**Inability to provide requested information.**—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

**Information to be Provided in Response to This Notice of Institution:** As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any

known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2010.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales,

internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of

*Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2010, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 21, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016–17679 Filed 7–29–16; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1015]

### Certain Hand Dryers and Housings for Hand Dryers: Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S.

International Trade Commission on June 24, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Excel Dryer, Inc. of East Longmeadow, Massachusetts. A supplement to the complaint was filed on July 14, 2016. The complaint alleges violations of section 337 based upon the importation into the United States, or in the sale of certain hand dryers and housings for hand dryers by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

**SUPPLEMENTARY INFORMATION:**

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 26, 2016, ORDERED THAT —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or in the sale of certain

hand dryers and housings for hand dryers by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Excel Dryer, Inc., 357 Chestnut Street, East Longmeadow, MA 01028

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ACL Group (Intl.) Ltd., Hill Farm, Sleep Hill Lane, Skelbrooke, Doncaster DN6 8LZ, United Kingdom

Alpine Industries Inc., 27 Selvage Street, Irvington, New Jersey 07111  
FactoryDirectSale, 3900 E. Philadelphia Street, Ontario, CA 91761

Fujian Oryth Industrial Co., Ltd., (a/k/a Oryth), No.863 Xiahe Road, Siming District, Xiamen, Fujian, 361006, China

Jinhua Kingwe Electrical Co. Ltd., (a/k/a Kingwe), No. 1600, West Wujiang Road, Jinhua City, Zhejiang Province, 321018, China

Person & Co., Room 1011, N 218 Hengfeng Road, Zhabei District, Shanghai, China

Taizhou Dihour Electrical Appliances Co., Ltd., a/k/a Dihour, North Dashi Class I Highway, Daxi Town, Wenling City, Zhejiang Province 317525, China

TC Bunny Co., Ltd., Room 201, Building 418, Madang Road, Shanghai, China  
Toolsempire, 3900 E. Philadelphia Street, Ontario, CA 91761

US Air Hand Dryer, c/o Kristen Nguyen, 9221 Rose Parade Way, Sacramento, CA 95826

Sovereign Industrial (Jiaxing) Co. Ltd., d/b/a Vinovo, No. 111 Xiuxin Road, Xiuzhou Industrial Park, Jiaxing Zhejiang Jiaxing 314000, China  
Zhejiang Aike Appliance Co., Ltd., Yong'an Industry Park, Xianju, Taizhou, Zhejiang, China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and  
(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and

Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 26, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016-18073 Filed 7-29-16; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1105-0099]

### Agency Information Collection Activities; Proposed Collection Comments Requested; USMS Medical Forms

**AGENCY:** U.S. Marshals Service, Department of Justice.

**ACTION:** 30-day notice.

**SUMMARY:** The Department of Justice (DOJ), U.S. Marshals Service (USMS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 FR 28887, on May 10, 2016, allowing for a 60 day comment period.

**DATES:** Comments are encouraged and will be accepted for an additional days until August 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time,



suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Nicole Timmons, U.S. Marshals Service, Washington, DC 20530-0001 (phone: 202-307-5168). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to [OIRA\\_submissions@omb.eop.gov](mailto:OIRA_submissions@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Overview of this information collection:*

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* USMS Medical Forms.

*The agency form number:* Form Numbers:

- USM-522A Physician Evaluation Report for USMS Operational Employees
- USM-522P Physician Evaluation Report for USMS Operational Employees—Pregnancy Only
- USM-600 Physical Requirements of USMS District Security Officers
- CSO-012 Request to Reevaluate Court Security Officer's Medical Qualification

3. *Affected public who will be asked or required to respond, as well as a brief abstract:*

—USM-522A Physician Evaluation Report for USMS Operational Employees

- *Affected public:* Private sector (Physicians).
- *Brief abstract:* This form is completed by an USMS operational employee's treating physician to report any illness/injury (other than pregnancy) that requires restriction from full performance of duties for longer than 80 consecutive hours.

—USM-522P Physician Evaluation Report for USMS Operational Employees (Pregnancy Only)

- *Affected public:* Private sector (Physicians).
- *Brief abstract:* Form USM-522P must be completed by the OB/GYN physician of pregnant USMS operational employees to specify any restrictions from full performance of duties.

—USM-600 Physical Requirements of USMS District Security Officers

- *Affected public:* Private sector (Physicians).
- *Brief abstract:* It is the policy of the USMS to ensure a law enforcement work force that is medically able to safely perform the required job functions. All applicants for law enforcement positions must have pre-employment physical examinations; existing District Security Officers (DSOs) must recertify that they are physically fit to perform the duties of their position each year. DSOs are individual contractors, not employees of USMS; Form USM-522 does not apply to DSOs.

—CSO-012 Request to Reevaluate Court Security Officer's Medical Qualification

- *Affected public:* Private sector (Physicians).
- *Brief abstract:* This form is completed by the Court Security Officer (CSO)'s attending physician to determine whether a CSO is physically able to return to work after an injury, serious illness, or surgery. The physician returns the evaluation to the contracting company, and if the determination is that the CSO may return to work, the CSO-012 is then signed off on by the contracting company and forwarded to the USMS for final review by USMS' designated medical reviewing official. Court Security Officers are contractors, not employees of USMS; Form USM-522A does not apply to CSOs.

4. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

USM-522A Physician Evaluation Report for USMS Operational Employees

It is estimated that 208 respondents will complete a 20 minute form twice per year.

USM-522P Physician Evaluation Report for USMS Operational Employees (Pregnancy Only)

It is estimated that 7 respondents will complete a 15 minute form twice per year.

USM-600 Physical Requirements of USMS District Security Officers

It is estimated that 2,000 respondents will complete a 20 minute form.

CSO-012 Request to Reevaluate Court Security Officer's Medical Qualification

It is estimated that 300 respondents will complete a 30 minute form.

5. *An estimate of the total public burden (in hours) associated with the collection:*

USM-522A Physician Evaluation Report for USMS Operational Employees

There are an estimated 139 annual total burden hours associated with this collection.

USM-522P Physician Evaluation Report for USMS Operational Employees (Pregnancy Only)

There are an estimated 4 annual total burden hours associated with this collection.

USM-600 Physical Requirements of USMS District Security Officers

There are an estimated 667 annual total burden hours associated with this collection.

CSO-012 Request to Reevaluate Court Security Officer's Medical Qualification

There are an estimated 150 annual total burden hours associated with this collection.

*Total Annual Time Burden Hour:* 960.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: July 26, 2016.

**Jerri Murray,**  
*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2016-18068 Filed 7-29-16; 8:45 am]

**BILLING CODE 4410-04-P**

**DEPARTMENT OF JUSTICE**

[Docket No. OAG 151; AG Order No. 3714–2016]

RIN 1121–AA87

**Office of the Attorney General;  
Supplemental Guidelines for Juvenile  
Registration Under the Sex Offender  
Registration and Notification Act**

**AGENCY:** Department of Justice.

**ACTION:** Final guidelines.

**SUMMARY:** The Sex Offender Registration and Notification Act (“SORNA”) requires registration of individuals convicted of sex offenses as adults and, in addition, registration of juveniles adjudicated delinquent for certain serious sex offenses. SORNA also provides for a reduction of justice assistance funding to eligible jurisdictions that fail to “substantially implement” SORNA’s requirements, including the juvenile registration requirement, in their sex offender registration programs. These guidelines provide guidance regarding the substantial implementation of the juvenile registration requirement by eligible jurisdictions. The Justice Department’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking will examine the following factors when assessing whether a jurisdiction has substantially implemented SORNA’s juvenile registration provisions: policies and practices to prosecute as adults juveniles who commit serious sex offenses; policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and other policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are available as needed for public safety purposes. By affording jurisdictions greater flexibility in their efforts to substantially implement SORNA’s juvenile registration requirement, the guidelines will further SORNA’s public safety objectives in relation to serious juvenile sex offenders and facilitate jurisdictions’ substantial implementation of all aspects of SORNA. The guidelines concern only substantial implementation of SORNA’s juvenile registration requirement and do not affect substantial implementation of SORNA’s registration requirements for individuals convicted of sex offenses as adults.

**DATES:** *Effective Date:* August 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Luis C.deBaca, Director, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking; Office of Justice Programs, United States Department of Justice, Washington, DC, (202) 514–4689.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Sex Offender Registration and Notification Act (“SORNA”), title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109–248, was enacted on July 27, 2006. SORNA (42 U.S.C. 16901 *et seq.*) establishes minimum national standards for sex offender registration and notification in the jurisdictions to which it applies. “Jurisdictions” in the relevant sense are the 50 states, the District of Columbia, the five principal U.S. territories, and federally recognized Indian tribes that satisfy certain criteria. 42 U.S.C. 16911(10).

SORNA provides a financial incentive for eligible jurisdictions to adopt its standards, by requiring a 10 percent reduction of federal justice assistance funding to an eligible jurisdiction if the Attorney General determines that the jurisdiction has failed to “substantially implement” SORNA. 42 U.S.C. 16925(a). SORNA also directs the Attorney General to issue guidelines and regulations to interpret and implement SORNA. *See id.* 16912(b). To this end, the Attorney General issued the *National Guidelines for Sex Offender Registration and Notification* (“SORNA Guidelines”), 73 FR 38030, on July 2, 2008, and the *Supplemental Guidelines for Sex Offender Registration and Notification* (“Supplemental Guidelines”), 76 FR 1630, on January 11, 2011. The Justice Department’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (“SMART Office”) assists all jurisdictions in their SORNA implementation efforts and determines whether they have substantially implemented SORNA’s requirements in their registration and notification programs. *See* 42 U.S.C. 16945; 73 FR at 38044, 38047–48; 76 FR at 1638–39.

In addition to requiring registration based on adult convictions for sex offenses, SORNA includes as covered “sex offender[s]” juveniles at least 14 years old who have been adjudicated delinquent for particularly serious sex offenses. 42 U.S.C. 16911(1), (8); *see id.* 16913 (setting forth registration requirements). In relation to the juvenile registration requirement, as in other contexts, the SMART Office “consider[s] on a case-by-case basis whether jurisdictions’ rules or

procedures that do not exactly follow the provisions of SORNA . . . ‘substantially’ implement SORNA, assessing whether the departure from a SORNA requirement will or will not substantially disserve the objectives of the requirement.” 73 FR at 38048.

The SORNA Guidelines explained, in particular, that substantial implementation of SORNA need not include registration of juveniles adjudicated delinquent for certain lesser offenses within the scope of SORNA’s juvenile registration provisions. The Guidelines stated that jurisdictions can achieve substantial implementation if they cover offenses by juveniles at least 14 years old that consist of engaging (or attempting or conspiring to engage) in a sexual act with another by force or the threat of serious violence or by rendering unconscious or involuntarily drugging the victim. *Id.* at 38050. This interpretation of substantial implementation addressed concerns about the potential registration of juveniles in some circumstances based on consensual sexual activity with other juveniles, which is outside the scope of the coverage required by the Guidelines. *See id.* at 38040–41.

The Supplemental Guidelines included a subsequent change affecting the treatment of all persons required to register on the basis of juvenile delinquency adjudications. SORNA authorizes the Attorney General to create exemptions from SORNA’s requirement that information about registered sex offenders be made available to the public through Web site postings and other means. *See* 42 U.S.C. 16918(c)(4), 16921(b). The Supplemental Guidelines noted that the SORNA Guidelines had endeavored to facilitate jurisdictions’ compliance with SORNA’s registration requirement for “juveniles at least 14 years old who are adjudicated delinquent for particularly serious sex offenses,” but that “resistance by some jurisdictions to public disclosure of information about sex offenders in this class has continued to be one of the largest impediments to SORNA implementation.” 76 FR at 1636. The Attorney General accordingly exercised his exemption authority “to allow jurisdictions to exempt from public . . . disclosure information concerning sex offenders required to register on the basis of juvenile delinquency adjudications.” *Id.* This exemption did not change the requirement that such juveniles be registered and that information about them be transmitted or made available “to the national (non-public) databases of sex offender information, to law enforcement and supervision agencies,

and to registration authorities in other jurisdictions.” *Id.* at 1637.

Based on additional experience with SORNA implementation, and further reflection on the practicalities and effects of juvenile registration, the Department of Justice proposed and solicited public comment on new supplemental guidelines modifying the approach the SMART Office will take in assessing whether a jurisdiction has substantially implemented SORNA’s juvenile registration requirement; those proposed supplemental guidelines were published in the **Federal Register** on April 11, 2016, at 81 FR 21397. The public comment period closed on June 10, 2016. Following consideration of the public comments received, the Department of Justice is now finalizing these supplemental guidelines. For the reasons explained below, the new guidelines will allow consideration of a broader range of measures that may protect the public from serious juvenile sex offenders in determining substantial implementation.

While most states provide for registration of some sex offenders based on juvenile delinquency adjudications, many do not or do so only on a discretionary basis. See SMART Office, SMART Summary: Prosecution, Transfer, and Registration of Serious Juvenile Sex Offenders 10–11, 24–29 (Mar. 2015) (“SMART Juvenile Summary”), [www.smart.gov/pdfs/smartjuvenilelessum.pdf](http://www.smart.gov/pdfs/smartjuvenilelessum.pdf). Too rigid an approach to implementation of the juvenile registration aspect of SORNA, which affects a limited subclass of sex offenders, may conflict at a practical level with the objective of implementing SORNA’s more broadly applicable reforms, which affect the whole universe of convicted sex offenders. This occurs when a jurisdiction’s unwillingness or inability to implement the juvenile registration requirement discourages or stymies further efforts to implement SORNA generally, because the deficit regarding juvenile registration alone precludes approval of the jurisdiction as having substantially implemented SORNA. Moreover, the juvenile registration requirement is in some respects unique in terms of its scope and rationale and the potential for furthering its objectives by other means.

First, juveniles may be subject to prosecution in either of two distinct justice systems—the juvenile justice system or the adult criminal justice system. The SORNA Guidelines provide that registration jurisdictions may substantially implement SORNA’s juvenile registration requirement by registering persons at least 14 years old at the time of the offense who are

adjudicated delinquent for an offense amounting to rape or its equivalent, or an attempt or conspiracy to commit such an offense. See 73 FR at 38041, 38050. Practically all states authorize or require adult prosecution for many or all such juveniles. See SMART Juvenile Summary 5–9, 16, 19–23. Where juveniles are prosecuted as adults, the resulting convictions are treated as adult convictions under SORNA, and SORNA’s general provisions require the sex offender to register. See 73 FR at 38050.

Consequently, a jurisdiction may advance SORNA’s public safety goals in relation to serious juvenile sex offenders not only by prescribing mandatory registration for those offenders adjudicated delinquent, but also by prosecuting such offenders in the adult criminal justice system. Consider a jurisdiction that normally subjects sex offenders in SORNA’s juvenile registration category to adult prosecution and conviction, with resulting registration, but that does not have mandatory registration for the relatively few offenders in this category who are proceeded against in the juvenile justice system. With respect to most sex offenders, the jurisdiction protects the public through registration at least as effectively as a jurisdiction that proceeds against more offenders as juveniles and has mandatory registration based on delinquency adjudications, because all individuals convicted of qualifying sex offenses as adults are required to register. In some respects, a jurisdiction oriented towards adult prosecution of the most serious juvenile sex offenders may more effectively advance SORNA’s public safety objectives, because prosecution as an adult also makes available the more substantial incarceration and supervision sanctions of the adult criminal justice system. But if mandatory juvenile registration is treated as a *sine qua non* of substantial SORNA implementation, that jurisdiction could not be approved as having substantially implemented SORNA.

A second feature unique to juvenile sex offenders is that SORNA requires registration only for certain juveniles who are adjudicated delinquent for particularly serious sex offenses—that is, sex offenses that are “comparable to or more serious than aggravated sexual abuse” (or attempt or conspiracy to commit such offenses). 42 U.S.C. 16911(8). Jurisdictions that allow for discretionary registration of juveniles adjudicated delinquent for sex offenses may in practice capture many of the juveniles in SORNA’s juvenile

registration category—especially those who pose the most danger to others—in their registration schemes. Rather than simply rejecting a jurisdiction’s approach to juvenile registration for having a discretionary aspect, examination of these registration programs as applied would allow the SMART Office to determine whether, when considered as part of a jurisdiction’s overall registration scheme, this variance does or does not substantially disserve SORNA’s purposes.

Considering discretionary juvenile registration might appear to be inconsistent with the response to public comments accompanying the issuance of the SORNA Guidelines, which stated that registration as “a matter of judicial discretion” is insufficient to substantially implement SORNA’s juvenile registration requirement. 73 FR at 38038. However, that response addressed comments urging that discretionary registration should in itself be considered sufficient implementation of SORNA’s requirements, “ignor[ing] what SORNA provides on this issue, and instead do[ing] something different that the commenters believe to be better policy.” *Id.* That is not the approach of these guidelines, which contemplate that the SMART Office will consider the full range of pertinent measures a jurisdiction may adopt, and do not assume that simply replacing a mandatory registration requirement with a discretionary one achieves in substance what SORNA requires. For example, consider a jurisdiction that (i) largely requires registration by sex offenders in SORNA’s juvenile registration class because those offenders are likely to be prosecuted and convicted in the adult criminal justice system, (ii) allows registration on a discretionary basis for sex offenders who remain in the juvenile justice system, and (iii) provides other effective post-release monitoring and identification measures for juvenile sex offenders as discussed below. In assessing whether such a jurisdiction has substantially implemented SORNA’s juvenile registration requirement, it is appropriate to take into account the jurisdiction’s discretionary registration of adjudicated delinquents along with other factors, and doing so does not conflict with the prior rejection of approaches that “ignore[] what SORNA provides.” *Id.*

A third feature specific to the juvenile context is the prevalence of juvenile confidentiality provisions, which can limit the availability of information about the identities, locations, and

criminal histories of juvenile sex offenders. Potential consequences of these confidentiality provisions include that (i) law enforcement agencies may lack information about certain sex offenders in their areas that could, if known, assist in solving new sex crimes and apprehending the perpetrators; (ii) sex offenders may be less effectively discouraged from engaging in further criminal conduct, because the authorities do not know their identities, locations, and criminal histories; and (iii) offenders' histories of sexual violence or child molestation, which might disqualify them from positions giving them control over or access to potential victims (such as childcare positions), may not be disclosed through background check systems or affirmative notice to appropriate authorities. These confidentiality provisions accordingly may negatively affect the achievement of SORNA's public safety objectives. *See* 73 FR at 38044–45, 38060–61. Congress's decision to subject certain juvenile sex offenders to SORNA's registration requirements was an effort to overcome risks to the public posed by juvenile confidentiality requirements that Congress considered too broad. *See* H.R. Rep. No. 109–218, pt. 1, at 25 (2005).

A jurisdiction that does not implement juvenile registration in the exact manner specified in SORNA's juvenile registration provisions may nevertheless adopt other measures that address the underlying concerns as part of its substantial implementation of SORNA. For example, a jurisdiction may have means of monitoring or tracking juvenile sex offenders following release, such as extended post-release supervision regimes or address-reporting requirements, that may not incorporate all aspects of SORNA's registration system, but that may nevertheless help law enforcement agencies to identify the sex offenders in their areas and the perpetrators of new sex offenses. Confidentiality requirements for juvenile records may be appropriately defined and limited so as not to conceal risks to potential victims from persons who committed serious sex offenses as juveniles.

In sum, a number of factors are reasonably considered in ascertaining whether a jurisdiction has substantially implemented SORNA's juvenile registration provisions, which have not been articulated or given weight to the same extent under previous guidelines. Accordingly, in these guidelines, the Attorney General expands the matters that the SMART Office will consider in determining substantial implementation of this SORNA requirement. This

expansion recognizes that jurisdictions may adopt myriad robust measures to protect the public from serious juvenile sex offenders, and will help to promote and facilitate jurisdictions' substantial implementation of all aspects of SORNA.

### Summary of Comments on the Proposed Supplemental Guidelines

Twenty-six comments were received from various agencies, organizations, and individuals. A number of the comments were favorable to the proposed supplemental guidelines' expansion of the matters that the SMART Office will consider in determining whether registration jurisdictions have substantially implemented SORNA's juvenile registration provisions. Some of the comments urged that the guidelines should go further, such as by eliminating all registration of juvenile sex offenders. As discussed below, comments of this nature seek actions that are beyond the legal authority of the Department of Justice. Such comments are not germane to the formulation of these guidelines, which explain how the SMART Office will approach the determination whether registration jurisdictions have substantially implemented the existing juvenile registration requirement under SORNA.

The specific comments, with their identifying designations on [www.regulations.gov](http://www.regulations.gov) shown in brackets, are as follows:

#1. This comment [DOJ–OAG–2016–0004–0005], submitted by 15 individuals identified as researchers with expertise on juvenile sexual offending, contains three specific recommendations for revising these guidelines:

(i) The first recommendation is to remove all requirements for registration of youth adjudicated delinquent for sex offenses, based on studies the researchers describe as showing that such registration is ineffective and has adverse consequences. However, the Attorney General has no authority to repeal or amend federal laws by issuing guidelines, or to nullify SORNA's juvenile registration provisions in particular. *See* 73 FR at 38036–38, 38040–41, 38050.

(ii) The second recommendation is to remove all language in these guidelines that could encourage waiver of juveniles to adult criminal court, based on a study the researchers describe as implying that such waiver policies do not improve public safety and are subject to bias. However, these guidelines do not encourage prosecution of juveniles as adults. Rather, the guidelines (A)

recognize that practically all states authorize or require adult prosecution for many or all juveniles in SORNA's juvenile registration category, and (B) provide that policies or practices to prosecute as adults juveniles who commit serious sex offenses are appropriately considered in determining whether a jurisdiction has substantially implemented SORNA's juvenile registration requirement, because adult prosecution may result in registration and the availability of adult criminal sanctions.

(iii) The third recommendation is that language should be included in the guidelines supporting the provision of evidence-based treatment services to youth adjudicated delinquent of sex offenses and their caregivers, based on studies the researchers describe as demonstrating the efficacy of treatment. However, the guidelines as drafted already give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses—measures that may include treatment.

#2. This comment [DOJ–OAG–2016–0004–0020], from two individuals, refers to and states support for the recommendations appearing in comment #1, discussed above.

#3. This comment [DOJ–OAG–2016–0004–0022], submitted by the National Juvenile Justice Prosecution Center, states that these guidelines are a positive development in balancing public safety with the developmental nature and special needs of juvenile offenders, because they provide a more well-rounded approach to safety and greater flexibility.

#4. This comment [DOJ–OAG–2016–0004–0008], submitted on behalf of 14 organizations and individuals concerned about the inclusion of youth on sex offender registries, includes four specific recommendations and the conclusion that “youth registration should end.” Many of the adverse consequences of juvenile registration asserted by these commenters would appear to be related to public disclosure of juvenile sex offenders' identities and offenses as opposed to registration *per se*. The Attorney General has already provided in earlier supplemental guidelines under SORNA that registration jurisdictions need not publicly disclose information about sex offenders required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636–37. The specific recommendations in this comment are as follows:

(i) The first recommendation is to hold a full public hearing on these guidelines before finalizing them.

However, a public hearing is not necessary to conclude that the measures identified in these guidelines are appropriately considered in determining whether jurisdictions have substantially implemented SORNA's juvenile registration provisions. The comment does not explain what information relevant to the formulation of these guidelines would be conveyed in a hearing that has not or could not have been provided in the submitted public comments on these guidelines, and does not otherwise provide a persuasive reason to refrain from issuing these guidelines pending a hearing.

(ii) The second recommendation is to convene a task force to study and recommend best practices for youths charged with sexual offenses. However, convening a task force is not necessary to conclude that these guidelines' more flexible approach to determining substantial implementation is warranted. The comment does not explain what information relevant to the formulation of these guidelines would be obtained by a task force that has not or could not have been provided in the submitted public comments, and does not otherwise provide a persuasive reason to refrain from issuing these guidelines pending the creation of a task force and completion of its work.

(iii) The third recommendation is to revise the guidelines to explicitly incentivize evidence-based rather than harmful practices, such as a policy that eschews juvenile registration but "ensures that every young person adjudicated of a sexual offense undergoes a validated evaluation and is placed in risk and needs-based programming." As noted above, the Attorney General has no authority to nullify SORNA's juvenile registration requirement, *see* 73 FR at 38036–38, 38040–41, 38050, but in determining whether registration jurisdictions have substantially implemented that requirement, the guidelines as drafted give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses. These policies and practices may include evaluation and programming measures like those proposed by these commenters. To the extent this recommendation is directed against the guidelines' reference to adult prosecution of juvenile sex offenders, the response is the same as with comment #1 above. These guidelines do not encourage prosecution of juveniles as adults. Rather, the guidelines recognize the prevalence of policies and practices of adult prosecution of serious juvenile sex offenders, and they treat such policies and practices as relevant

factors in determining whether a jurisdiction has substantially implemented SORNA's juvenile registration requirement.

(iv) The fourth recommendation is to move towards a system that reassures states that they will not lose federal justice assistance funding if they do not register youth and discourages state policies that require youth registration. However, the Attorney General and the SMART Office are charged by law with seeking the substantial implementation of SORNA by registration jurisdictions, including SORNA's juvenile registration provisions. *See* 42 U.S.C. 16912, 16923–26, 16945. It is not consistent with this responsibility to assure states globally that they will not lose grant funding if they do not implement SORNA's juvenile registration requirement or to discourage them from implementing that requirement. *See* 73 FR at 38036–38, 38040–41, 38050.

#5. The authors of this comment [DOJ–OAG–2016–0004–0023] identify themselves as the parents of a 16-year-old who is currently incarcerated in a juvenile facility, and who is subject to lifetime inclusion on a sex offender registry, because he had pornographic pictures on his phone. The commenters express concern that this will ruin his life, including preventing him from being in a high school graduation ceremony or attending college. The concerns expressed in the comment relate to actions taken pursuant to state law and do not weigh against issuing guidelines that afford greater flexibility in determining substantial implementation of SORNA's juvenile registration provisions. SORNA itself does not require registration based on juvenile adjudications for pornography offenses like that described in this comment. In terms of offense coverage, it suffices for substantial implementation of SORNA's juvenile registration requirement if jurisdictions require registration of persons at least 14 years old at the time of the offense based on delinquency adjudications for offenses amounting to rape or its equivalent or an attempt or conspiracy to commit such an offense. *See* 73 FR at 38040–41, 38050. SORNA imposes no restrictions on registrants' attending high school or college. The Attorney General has provided in previously issued supplemental guidelines for SORNA implementation that jurisdictions need not publicly disclose information about persons required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636–37.

#6. This comment [DOJ–OAG–2016–0004–0011], submitted on behalf of the

Pueblo of Laguna, recommends (i)–(ii) amending state and federal law to ensure that youth sex offenders are placed on registries only after an individualized assessment, with periodic review of youth sex offender registrations, (iii) using youth sex offender registration information solely for law enforcement purposes and not disclosing it publicly, (iv) creating an impartial body to ensure that all registration information is accurate and not misleading and to remove youth offenders from registries as soon as registration requirements have ended, (v) advising juvenile sexual offense defendants of the consequences of a conviction or adjudication, including registration, community notification, and residency requirements, (vi) taking account of the need to protect the safety of people convicted of sex offenses in deciding the method and scope of community notification, and (vii) providing training on relevant youth issues to officers involved in the investigation of sexual offenses. Regarding (i)–(ii), the Attorney General has no legal authority to amend state or federal laws, and in particular, cannot nullify SORNA's juvenile registration provisions. *See* 73 FR at 38036–38, 38040–41, 38050. However, these guidelines will enable the SMART Office to consider a broader range of measures in determining whether registration jurisdictions have substantially implemented those provisions. Regarding (iii), (v), and (vi), which largely concern community notification, the Attorney General has provided in previous SORNA guidelines that registration jurisdictions need not publicly disclose information about sex offenders required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636–37. Also, regarding (v), SORNA imposes no restrictions on where sex offenders may live ("residency requirements"). Regarding (iv)–(vii) generally, the measures proposed do not conflict with SORNA or these guidelines and registration jurisdictions are free to adopt them.

#7. This comment [DOJ–OAG–2016–0004–0019] states opposition to sex offender registration generally, "for all but high-risk offenders," and in particular states that the commenter is vehemently against registration for persons committing sexual crimes as juveniles. The comment does not weigh against issuance of these guidelines, which explain how the SMART Office will determine whether registration jurisdictions have substantially implemented SORNA's juvenile

registration provisions, and allow consideration of an expanded range of measures in that determination.

#8. This comment [DOJ–OAG–2016–0004–0012] proposes eliminating requirements for juvenile registration and supporting well-delivered specialized treatment. However, the Attorney General has no authority to eliminate SORNA’s juvenile registration provisions. *See* 73 FR at 38036–38, 38040–41, 38050. These guidelines give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses, measures that may include treatment.

#9. The authors of this comment [DOJ–OAG–2016–0004–0017] identify themselves as the parents of a 15-year-old boy who is required to register as a sex offender for 10 years, because of a child pornography adjudication based on his sending unsolicited photos of his genitalia to a female classmate. The commenters express concern about adverse effects on their son’s life, including limitation of employment opportunities and unsupervised association with a younger brother, and they reproduce and endorse the recommendations set forth in comment #1. Regarding those recommendations, *see* the discussion of comment #1 above. The comment otherwise relates to actions taken pursuant to state law and does not weigh against issuance of these guidelines, which afford greater flexibility in determining substantial implementation of SORNA’s juvenile registration provisions. SORNA does not require registration based on juvenile adjudications for offenses like that described in this comment. In terms of offense coverage, it suffices for substantial implementation of SORNA’s juvenile registration requirement if jurisdictions require registration of persons at least 14 years old at the time of the offense based on delinquency adjudications for offenses amounting to rape or its equivalent or an attempt or conspiracy to commit such an offense. *See* 73 FR at 38040–41, 38050. SORNA imposes no restrictions on registrants’ qualification for employment or on unsupervised association with younger children. The Attorney General has provided in previously issued supplemental guidelines for SORNA implementation that jurisdictions need not publicly disclose information about persons required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636–37.

#10. This comment [DOJ–OAG–2016–0004–0004] describes the changes in these guidelines as a step in the right direction, but it characterizes SORNA as

“misguided” in relation to juvenile offenders and encourages exploration of other methods of sexual abuse prevention that are less likely to be counterproductive for juvenile offenders and that are focused only on juvenile offenders determined after judicial review to be a risk. However, the Attorney General does not have the authority to override the legislative judgments embodied in SORNA, including SORNA’s juvenile registration provisions. *See* 73 FR at 38036–38, 38040–41, 38050. The comment also states that a number of statements in these guidelines are premised on the assumption that juveniles will sexually reoffend, an assumption that the comment says is not supported by research. However, these guidelines are not premised on an assumption about the extent of re-offense by juvenile sex offenders. Rather, they explain how the SMART Office will determine whether registration jurisdictions have substantially implemented SORNA’s juvenile registration provisions and allow consideration of an expanded range of measures in making that determination. Finally, the comment includes a technical suggestion that a definition of “sexual act” should be included in the background information part of these guidelines, right after the term is used. The preamble cross-references the original SORNA Guidelines, 73 FR at 38050, which provide the relevant definition of “sexual act”. The comment does not provide a reason why the definition of this term should be reproduced in these supplemental guidelines.

#11. This comment [DOJ–OAG–2016–0004–0024], submitted on behalf of Human Rights Watch, recommends deleting two of the three specific factors these guidelines give weight to—policies and practices to prosecute as adults juveniles who commit serious sex offenses, and policies and practices to register juveniles adjudicated delinquent for serious sex offenses. In support of this recommendation, the comment argues that adult prosecution of juveniles and registration of juveniles have various adverse effects on juveniles. However, the comment provides no persuasive reason why the guidelines should not give weight to these factors. In determining whether registration jurisdictions have substantially implemented SORNA’s juvenile registration requirement, policies and practices of adult prosecution of serious juvenile sex offenders may be relevant because they may result in registration and the availability of adult criminal sanctions,

and policies and practices of registering juvenile sex offenders may be relevant because, even if discretionary, they may in practice capture many of the juveniles in SORNA’s juvenile registration category in the jurisdiction’s registration scheme.

#12. This comment [DOJ–OAG–2016–0004–0015], submitted on behalf of the National District Attorneys Association, views the guidelines favorably as providing states with flexibility to comply with SORNA and protect community safety while maintaining the integrity of their juvenile justice systems.

#13. This comment [DOJ–OAG–2016–0004–0026], submitted on behalf of the Lambda Legal Defense and Education Fund, joins in the recommendations of comment #4. The comment particularizes some of the recommendations of comment #4 to reference specifically LGBTQ youth and it asserts that criminal prosecution and punishment and registration for sex offenses operate more harshly against LGBTQ youth. The response to this comment is essentially the same as the response to comment #4.

#14. This comment [DOJ–OAG–2016–0004–0016], submitted on behalf of the Association for the Treatment of Sexual Abusers, generally criticizes juvenile registration and adult prosecution of juveniles, states support for giving jurisdictions greater discretion whether to register children adjudicated for sexual crimes, thanks the SMART Office for its continued efforts in developing a more responsive and nuanced policy, and provides four specific recommendations:

(i) The first recommendation is to develop appropriate assessments taking account of a youth’s clinical, family, and environmental situation to formulate effective, individualized treatment and management plans for youth. However, the guidelines as drafted give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses, which may include the measures described in this comment.

(ii) The second recommendation is to remove requirements for broad-based youth registration and notification. However, SORNA itself requires registration by certain juveniles adjudicated delinquent for serious sex offenses. The Attorney General has no authority to change what SORNA provides. These guidelines are responsive to the concerns expressed in this comment, within the bounds of the law, in allowing consideration of a broader range of measures in

determining whether jurisdictions have substantially implemented SORNA's juvenile registration requirement. The Attorney General has already provided in earlier guidelines under SORNA that registration jurisdictions need not engage in public notification regarding juveniles required to register on the basis of delinquency adjudications. *See* 76 FR at 1636–37.

(iii) The third recommendation is to include language that supports the use of evidence-based treatment and management strategies for youth. However, the guidelines as drafted already give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses, which may include evidence-based treatment and management strategies.

(iv) The fourth recommendation is to remove language that promotes the waiver of youth to adult courts. The response to comment #1 includes discussion of this issue.

#15. This comment [DOJ–OAG–2016–0004–0021], submitted on behalf of Stop It Now!, supports the recommendations appearing in comment #1. Those recommendations are discussed above in connection with comment #1.

#16. The author of this comment [DOJ–OAG–2016–0004–0010] criticizes the sex offender registration system of his state as adversely impacting juveniles. The comment asks for a direction to the 50 states, the District of Columbia, and the territories to create a process to remove all their registered sex offenders who were convicted when juveniles from every registry by January 2018 and to stop adding new juveniles immediately. The Attorney General has no legal authority to issue such a direction to registration jurisdictions.

#17. This comment [DOJ–OAG–2016–0004–0006], submitted on behalf of the Annie E. Casey Foundation, refers to the letter discussed as comment #1 above, states concerns and recommendations similar to those appearing in that letter, and particularly emphasizes the commenter's concern about prosecution of juveniles as adults. The response to comment #1 discusses these matters.

#18. This comment [DOJ–OAG–2016–0004–0014], submitted by the Attorney General of Alaska, (i) endorses the more flexible approach of these guidelines to determining substantial implementation of SORNA's juvenile registration provisions, (ii) notes that the SMART Office has previously found that Alaska was not compliant with SORNA's juvenile registration requirement, and (iii) provides information about Alaska's system in support of a different conclusion under the new guidelines.

Following the issuance of these guidelines, the SMART Office will entertain requests for substantial implementation determinations regarding juvenile registration in conformity with the new guidelines, including requests from jurisdictions previously subject to negative determinations under the pre-existing substantial implementation standards.

#19. The author of this comment [DOJ–OAG–2016–0004–0018] identifies himself or herself as the parent of a son adjudicated for distributing child pornography, based on sending pictures of himself to a classmate he had a crush on when he was 14. The comment states that the son will have to register as a sex offender for at least 10 years as a result, and that he now cannot attend the high school he attended over the last year or other schools in the area. The comment urges that a child should not be labeled a sex offender for sending a picture of himself to a friend. The response to this comment is essentially the same as the response to comments #5 and #9 above. The concerns expressed in the comment relate to actions taken pursuant to state law and do not weigh against issuing guidelines that afford greater flexibility in determining substantial implementation of SORNA's juvenile registration provisions. SORNA does not require registration based on juvenile adjudications for offenses like that described in the comment, does not restrict where juvenile sex offenders may go to school, and does not require public disclosure of identity or other information for juveniles required to register on the basis of delinquency adjudications.

#20. This comment [DOJ–OAG–2016–0004–0003] recommends that the SMART Office seek a change in the law so that states cannot publicly post information about juvenile registrants on Web sites unless the registrants are tried and convicted in adult court. The comment is not germane to these guidelines, which are concerned with substantial implementation of the juvenile registration requirement under existing federal law (SORNA). The Attorney General has already provided in earlier guidelines under SORNA that registration jurisdictions need not publicly post information about persons required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636–37. The comment also suggests that the SMART Office tell states that they will be out of compliance and lose 10% of federal funding if they have restrictions on where registrants can live. The SMART Office has no authority to do so because SORNA contains nothing that either

prohibits or requires residency restrictions.

#21. This comment [DOJ–OAG–2016–0004–0007], submitted on behalf of the National Criminal Justice Association, states support for these guidelines. The comment notes that some states have not yet achieved substantial implementation of SORNA because of SORNA's mandatory registration requirements for specific juvenile offenses. The comment states that by allowing the SMART Office to assess juvenile registration in a more holistic manner and to review comprehensively relevant state policies and practices, the guidelines “will go a long way in allowing states . . . to achieve substantial implementation with the requirements of SORNA . . . in a way that protects community safety.” Noting that many states have fallen short of compliance in relation to required registration for adjudicated juveniles, the comment describes these guidelines as a welcome clarification about the review the SMART Office will undertake in assessing whether a jurisdiction has substantially implemented SORNA's juvenile registration provisions.

#22. This comment [DOJ–OAG–2016–0004–0025] criticizes sex offender registration for anyone under 20. As explained in the responses to other comments, the Attorney General has no authority to change sex offender registration laws, and in particular, no authority to eliminate SORNA's juvenile registration requirement.

#23. This comment [DOJ–OAG–2016–0004–0002] includes pictures of an apparently injured individual, with text representing that the injuries resulted from an attack occasioned by his inclusion on a sex offender registry. The comment says that this is what all people labeled as sex offenders can expect from their government. The comment is not germane to these guidelines, which explain how the SMART Office will determine whether registration jurisdictions have substantially implemented SORNA's juvenile registration requirement. If the point of the comment is to assert a risk of violence against sex offenders resulting from public disclosure of their identities, the Attorney General has provided in earlier guidelines that jurisdictions need not make such disclosure for sex offenders required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636–37.

#24. This comment [DOJ–OAG–2016–0004–0013], submitted by the Secretary of Public Safety and Homeland Security of the State of Virginia, states support



for these guidelines. The comment recounts that Virginia has been determined to be out of compliance with SORNA because of state statutes that do not automatically require juvenile registration. The comment characterizes as a very welcome development the guidelines' provision for determining substantial implementation with SORNA based on a more comprehensive view of adjudicated juveniles and expresses confidence that the new approach will be beneficial to Virginia in reaching substantial implementation of SORNA. As noted above in the response to a similar comment from the Attorney General of Alaska (#18), the SMART Office will entertain requests for substantial implementation determinations regarding juvenile registration in conformity with the new guidelines, including requests from jurisdictions previously subject to negative determinations under the pre-existing substantial implementation standards.

#25. This comment [DOJ–OAG–2016–0004–0009] is submitted on behalf of “Just Kids,” described as a national coalition made up of legal experts, child advocates, juvenile justice policy experts, and victim advocates concerned about including youth on sex offender registries. The commenters overlap with those submitting comment #4 and the comment is similar in substance to comment #4. The response is essentially the same as that provided above to comment #4.

#26. This comment [DOJ–OAG–2016–0004–0027] states that underage children should not have to suffer lifelong consequences for a mistake and asks for the enactment of a law providing that underage children shown to be productive citizens during their rehabilitation can be blemish-free later in their adult productive life. The Attorney General does not have the authority to enact laws and the comment is not germane to the issuance or formulation of guidelines concerned with the determination whether registration jurisdictions have substantially implemented SORNA's juvenile registration requirement.

In sum, the public comments received did not provide any persuasive reason to change or delay finalization of the proposed guidelines, which are finalized here without change.

#### **Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act**

If a jurisdiction does not register juveniles at least 14 years old who are adjudicated delinquent for particularly

serious sex offenses in exact conformity with SORNA's provisions—for example, because the jurisdiction uses a discretionary process for determining such registration—the SMART Office will examine the following factors when assessing whether the jurisdiction has nevertheless substantially implemented SORNA's juvenile registration requirements: (i) Policies and practices to prosecute as adults juveniles who commit serious sex offenses; (ii) policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and (iii) other policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are available as needed for public safety purposes. Consistent with the requirements for other aspects of a jurisdiction's program that do not exactly follow SORNA's provisions, a jurisdiction that seeks to rely on these factors in establishing substantial implementation must identify any departure from SORNA's requirements in its submission to the SMART Office and “explain why the departure from the SORNA requirements should not be considered a failure to substantially implement SORNA.” 73 FR at 38048. The SMART Office will determine that a jurisdiction relying on these factors has substantially implemented SORNA's juvenile registration requirement only if it concludes that these factors, in conjunction with that jurisdiction's other policies and practices, have resulted or will result in the registration, identification, tracking, monitoring, or management of juveniles who commit serious sex offenses, and in the availability of the identities and sex offenses of such juveniles as needed for public safety purposes, in a manner that does not substantially disserve SORNA's objectives.

Dated: July 26, 2016.

**Loretta E. Lynch**

*Attorney General.*

[FR Doc. 2016–18106 Filed 7–29–16; 8:45 am]

**BILLING CODE 4410–18–P**

## **DEPARTMENT OF JUSTICE**

[[OMB Number 1100–NEW]]

### **Agency Information Collection Activities; Proposed eCollection; eComments Requested Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery**

**AGENCY:** U.S. Department of Justice and various components.

**ACTION:** 30-Day notice.

**SUMMARY:** As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, Department of Justice will be submitting a Generic Information Collection Request (Generic ICR): “Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery” to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

**DATES:** The purpose of this notice is to allow for an additional 30 days for public comment until August 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jerri Murray, Department Clearance Officer, [lynn.murray2@usdoj.gov](mailto:lynn.murray2@usdoj.gov); or the DOJ Desk Officer at 202–395–1743. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 205630 or sent to [OIRA\\_submissions@omb.eop.gov](mailto:OIRA_submissions@omb.eop.gov).

#### **SUPPLEMENTARY INFORMATION:**

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Abstract:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where

communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** FR 2010–32084, December 21, 2010.

Below we provide the Department of Justice's projected average estimates for the next three years:<sup>1</sup>

*Current Actions:* New collection of information.

*Type of Review:* New Collection.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

*Average Expected Annual Number of Activities:* 42.

*Average Number of Respondents per Activity:* 51,500.

*Annual Responses:* 309,000.

<sup>1</sup> The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

*Average Expected Annual Number of Activities:* 25,000.

*Average Number of Respondents per Activity:* 200.

*Annual Responses:* 5,000,000.

*Frequency of Response:* Once per request.

*Average Minutes per Response:* 30.

*Burden Hours:* 2,500,000.

*Frequency of Response:* Once per request.

*Average Minutes per Response:* 30 min.

*Burden Hours:* 99,847.

*Federal Government Cost:* \$176,925.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: July 27, 2016.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2016–18084 Filed 7–29–16; 8:45 am]

**BILLING CODE 4410–ML–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### **Agency Information Collection Activities; Submission for OMB Review; Comment Request; Plan Asset Transactions Determined by In-House Asset Managers Under Prohibited Transaction Class Exemption 1996–23**

**AGENCY:** Office of the Secretary, DOL.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) will submit the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, “Plan Asset Transactions Determined by In-House Asset Managers Under Prohibited Transaction Class Exemption 1996–23,” to the Office of Management and Budget (OMB) on July 30, 2016, for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before August 31, 2016.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at <http://www.reginfo.gov/public/do/>

*PRAViewICR?ref\_nbr=201605-1210-007* (this link will only become active on July 31, 2016) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL\_PRA\_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA\_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL\_PRA\_PUBLIC@dol.gov*.

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL\_PRA\_PUBLIC@dol.gov*.

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Plan Asset Transactions Determined by In-House Asset Managers Under Prohibited Transaction Class Exemption 1996–23 (PTE 96–23) information collection. PTE 96–23 permits various parties in interest to an employee benefit plan to engage in transactions involving plan assets if, among other requirements, the assets are managed by an in-house asset manager (INHAM). The information collection requirements that are PTE 96–23 conditions include written policies and procedures by an INHAM and audit requirements. An independent auditor will use the written policies and procedures to determine the INHAM's compliance with the exemption. An independent auditor will conduct an annual exemption audit and make a determination whether the INHAM is in compliance with the written policies and procedures and the objective requirements of the exemption. These information collections are designed to safeguard participants and beneficiaries in plans managed by INHAMS that are involved in transactions covered by the exemption. Employee Retirement Income Security Act of 1974 section 408(a) authorizes this information collection. See 29 U.S.C. 1108.

This information collection is subject to the PRA. A Federal agency generally

cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210-0145.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 23, 2015 (80 FR 72990).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210-0145. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL-EBSA.

*Title of Collection:* Plan Asset Transactions Determined by In-House

Asset Managers Under Prohibited Transaction Class Exemption 1996-23.

*OMB Control Number:* 1210-0145.

*Affected Public:* Private Sector—businesses or other for-profits and not-for-profit institutions.

*Total Estimated Number of Respondents:* 20.

*Total Estimated Number of Responses:* 20.

*Total Estimated Annual Time Burden:* 940 hours.

*Total Estimated Annual Other Costs Burden:* \$400,000.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: July 26, 2016.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2016-18123 Filed 7-29-16; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### **Agency Information Collection Activities; Submission for OMB Review; Comment Request; Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers Under Prohibited Transaction Exemption 1984-14**

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) will submit the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers Under Prohibited Transaction Exemption 1984-14," to the Office of Management and Budget (OMB) on July 30, 2016, for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before August 31, 2016.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201605-1210-004](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1210-004) (this link will only become active on July 31, 2016) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-

free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

#### **FOR FURTHER INFORMATION CONTACT:**

Contact Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

*Authority:* 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers Under Prohibited Transaction Exemption 1984-14 (PTE 84-14) information collection. PTE 84-14 permits a party that is related to an employee benefit plan to engage in transactions involving plan assets if, among other conditions, the assets are managed by a qualified professional asset manager (QPAM) that is independent of the parties in interest. Additional relief is also available under specific circumstances that are fully addressed within the exemption. The information collection requirements that are conditions of the exemption include written policies and procedures by a QPAM and audit requirements. An independent auditor uses the written policies and procedures to determine whether the QPAM is in compliance with the written policies and procedures and whether the exemption conditions have been met. These information collections are designed to safeguard participants and beneficiaries in plans that are involved in transactions covered by the exemption. PTE 84-14 does not require any reporting or filing with the Federal government. Employee Retirement Income Security Act of 1974 section 408(a) authorizes this information collection. See 29 U.S.C. 1108.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection

of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210-0128.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 23, 2015 (80 FR 72990).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210-0128. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
  - Enhance the quality, utility, and clarity of the information to be collected; and
  - Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL-EBSA.

*Title of Collection:* Plan Asset Transactions Determined by Independent Qualified Professional

Asset Managers Under Prohibited Transaction Exemption 1984-14.

*OMB Control Number:* 1210-0128.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 4,620.

*Total Estimated Number of Responses:* 4,620.

*Total Estimated Annual Time Burden:* 111,000 hours.

*Total Estimated Annual Other Costs Burden:* \$46,200,000.

Dated: July 26, 2016.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2016-18124 Filed 7-29-16; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2013-0016]

#### Nemko North America, Inc.: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of Nemko North America, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the Agency's preliminary finding to grant the application.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before August 16, 2016.

**ADDRESSES:** Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693-1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA-2013-0016, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-2625, Washington, DC 20210; telephone: (202) 693-2350 (TTY

number: (877) 889-5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.-4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA-2013-0016). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at <http://www.regulations.gov>. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before August 16, 2016 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210, or by fax to (202) 693-1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: [meilinger.francis@dol.gov](mailto:meilinger.francis@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and

Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210; phone: (202) 693-2110 or email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov).

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that Nemko North America, Inc. (NNA), is applying for expansion of its current recognition as an NRTL. NNA requests the addition of one test standard to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified

by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including NNA, which details the NRTL's scope of recognition. These pages are available from the

OSHA Web site at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

NNA currently has three facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: Nemko Canada, Inc., 303 River Road, Ottawa, Ontario, Canada K1V 1H2. A complete list of NNA's scope of recognition is available at <https://www.osha.gov/dts/otpca/nrtl/ccl.html>.

II. General Background on the Application

NNA submitted an application, dated June 25, 2015 (OSHA-2013-0016-0012), to expand its recognition to include one additional test standard. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 below lists the appropriate test standards found in NNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN NNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 62368-1 .....	Audio/Video, Information and Communication Technology Equipment—Part 1: Safety Requirements.

III. Preliminary Findings on the Application

NNA submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file, and pertinent documentation, indicate that NNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of this one test standard for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of NNA's application.

OSHA welcomes public comment as to whether NNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is

not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N-2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at <http://www.regulations.gov> under Docket No. OSHA-2013-0016.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant NNA's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 27, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016-18091 Filed 7-29-16; 8:45 am]

BILLING CODE 4510-26-P

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration**

[Docket No. OSHA–2009–0041]

**Formaldehyde Standard; Extension of the Office of Management and Budget's (OMB) Approval of Collections of Information****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Request for public comments.**SUMMARY:** OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the collections of information contained in the Formaldehyde Standard (29 CFR 1910.1048).**DATES:** Comments must be submitted (postmarked, sent, or received) by September 30, 2016.**ADDRESSES:***Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.*Facsimile:* If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0041, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.*Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2009–0041) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.*Docket:* To read or download comments or other material in thedocket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.**FOR FURTHER INFORMATION CONTACT:**

Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collections of information in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657). The standard protects workers from the adverse health effects from occupational exposure to formaldehyde, including an itchy, runny, and stuffy nose; a dry or sore throat; eye irritation; headaches; and cancer of the lung, buccal cavity (mouth), and pharynx (throat). Formaldehyde solutions can damage the skin and burn the eyes.

The standard specifies a number of collections of information. The

following is a brief description of the collections of information contained in the Formaldehyde Standard. The standard requires employers to conduct worker exposure monitoring to determine workers' exposure to formaldehyde, notify workers of their formaldehyde exposures, provide medical surveillance to workers, provide examining physicians with specific information, ensure that workers receive a copy of their medical examination results, maintain workers' exposure monitoring and medical records for specific periods, and provide access to these records by the affected workers, and their authorized representatives.

**II. Special Issues for Comment**

OSHA has a particular interest in comments on the following issues:

- Whether the proposed collection of information requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the collection of information requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

**III. Proposed Actions**

The Agency is requesting an adjustment increase of 581 burden hours (from 237,854 to 238,435 burden hours). The increase in burden hours is due to an estimated increase in the number of covered establishments and workers. There is also an estimated increase in operation and maintenance costs of \$1,835,764, from \$ 41,724,296 to \$43,560,060. The increase in operation and maintenance costs is due to the estimated increase in the number of covered workers undergoing exposure monitoring and medical exams.

OSHA is providing the following summary information about the Formaldehyde Standard information collection:

*Type of Review:* Extension of a currently approved collection.

*Title:* Formaldehyde Standard (29 CFR 1910.1048).

*OMB Control Number:* 1218–0145.

*Affected Public:* Businesses or other for-profits.

*Number of Respondents:* 86,320.

*Frequency of Responses:* Various.

*Total Responses:* 906,101.

*Average Time per Response:* Various.  
*Estimated Total Burden Hours:*  
 238,435.

*Estimated Cost (Operation and Maintenance):* \$43,560,060.

#### IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number (Docket No. OSHA–2009–0041) for this ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY) (877) 889–5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as their social security number and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

#### V. Authority and Signature

David Michaels, Ph.D., MPH,  
 Assistant Secretary of Labor for

Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on July 27, 2016.

David Michaels,

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2016–18090 Filed 7–29–16; 8:45 am]

BILLING CODE 4510–26–P

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (16–054)]

##### Notice of Intent To Grant Partially Exclusive License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of intent to grant partially exclusive license.

**SUMMARY:** This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the invention described and claimed in U.S. Patent No. 9,147,755 entitled "Nanostructure-Based Vacuum Channel Transistor"; to Nano Devices Corporation, having its principal place of business at 21821 Monte Court, Cupertino, CA 95014. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

**DATES:** The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

**ADDRESSES:** Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767.

##### FOR FURTHER INFORMATION CONTACT:

Robert M. Padilla, Chief Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035–1000. (650) 604–5104; Fax (650) 604–2767. Information about other NASA inventions available for licensing can be found online at <http://technology.nasa.gov/>.

Mark P. Dvorscak,

*Agency General Counsel for Intellectual Property.*

[FR Doc. 2016–18111 Filed 7–29–16; 8:45 am]

BILLING CODE 7510–13–P

#### NATIONAL CREDIT UNION ADMINISTRATION

##### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice and request for comment.

**SUMMARY:** The National Credit Union Administration (NCUA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment the following information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35).

**DATES:** Written comments should be received on or before August 31, 2016 to be assured consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on the information collections to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 5067, Alexandria, Virginia 22314; Fax No. 703–519–8579; or Email at [PRAComments@NCUA.gov](mailto:PRAComments@NCUA.gov).

##### FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to the address above.

##### SUPPLEMENTARY INFORMATION:

*OMB Number:* 3133–0108.

*Title:* Monitoring Bank Secrecy Act Compliance, 12 CFR 748.2.

*Abstract:* Section 748.2 of NCUA's regulations, directs credit unions to establish a Bank Secrecy Act (BSA) compliance program that maintains procedures designed to assure and



monitor compliance with the requirement of 31 U.S.C., Chap. 53, Subchapter II (sec. 5301–5329), the Bank Secrecy Act (31 U.S.C. 5318(g)), and 31 CFR Chapter X (parts 1000–1099), Financial Crimes Enforcement Network, Department of the Treasury. Each federally insured credit union (FICU) must develop and provide for the continued administration of a BSA compliance program to assure and monitor compliance with the recordkeeping and recording requirements prescribed by the BSA. At a minimum, a compliance program shall provide for a system of internal controls, independent testing for compliance, designation of an individual responsible for coordinating and monitoring day-to-day compliance; and training. NCUA examiners review the program to determine whether the credit union's procedures comply with all BSA requirements.

*Type of Review:* Extension of a previously approved collection.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated No. of Respondents/Recordkeepers:* 5,954.

*Estimated Annual Frequency:* 1.

*Estimated Annual No. of Responses:* 5,954.

*Estimated Burden Hours per Response:* 16.

*Estimated Total Annual Burden Hours:* 95,264.

Adjustment are being made to reflect the decline in the number of FICUs.

*OMB Number:* 3133–0146.

*Title:* Production of Non-public Records and Testimony of Employees in Legal Proceedings (Touhy Request).

*Abstract:* Title 12 CFR part 792, subpart C, requires anyone requesting NCUA non-public records for use in legal proceedings, or similarly the testimony of NCUA personnel, to provide NCUA with information regarding the requester's grounds for the request. This process is also known as a "Touhy Request". The information collected will help the NCUA decide whether to release non-public records or permit employees to testify in legal proceedings.

*Type of Review:* Extension of a previously approved collection.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated No. of Respondents:* 20.

*Estimated Annual Frequency:* 1.

*Estimated Annual No. of Responses:* 20.

*Estimated Burden Hours per Response:* 2.

*Estimated Total Annual Burden Hours:* 40.

*OMB Number:* 3133–0181.

*Title:* Registration of Mortgage Loan Originators.

*Abstract:* The Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act), 12 U.S.C. 5101 *et seq.*, as codified by 12 CFR part 1007, requires an employee of a bank, savings association, or credit union or a subsidiary regulated by a Federal banking agency or an employee of an institution regulated by the Farm Credit Administration (FCA), (collectively, Agency-regulated Institutions) who engages in the business of a residential mortgage loan originator (MLO) to register with the Nationwide Mortgage Licensing System and Registry (Registry) and obtain a unique identifier. Agency-regulated institutions must also adopt and follow written policies and procedures to assure compliance with the S.A.F.E. Act. The Registry is intended to aggregate and improve the flow of information to and between regulators; provide increased accountability and tracking of mortgage loan originators; enhance consumer protections; reduce fraud in the residential mortgage loan origination process; and provide consumers with easily accessible information at no charge regarding the employment history of, and the publicly adjudicated disciplinary and enforcement actions against MLOs.

*Type of Review:* Reinstatement of a previously approved collection.

*Affected Public:* Individuals or households; Private Sector: Not-for-profit institutions.

*Estimated No. of Respondents/Recordkeepers:* 56,276 MLO; 3,357 Federal-Insured Credit Unions (FICU).

*Estimated Annual Frequency:* 2.25.

*Estimated Annual No. of Responses:* 132,068.

*Estimated Burden Hours per Response:* 0.58.

*Estimated Total Annual Burden Hours:* 76,204.

Adjustment are being made to provide updated recordkeeping burden on FICU. Since 2010, the registry is a standard business practice for MLOs and adjustment have been made to reflect this decrease.

*Request for Comments:* Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on July 27, 2016.

Dated: July 27, 2016.

**Dawn D. Wolfgang,**

*NCUA PRA Clearance Officer.*

[FR Doc. 2016–18135 Filed 7–29–16; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 31, 2016. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nature McGinn, ACA Permit Officer, at the above address or [ACApermits@nsf.gov](mailto:ACApermits@nsf.gov) or (703) 292–7149.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and

designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

#### Application Details

##### Permit Application: 2017-006

1. *Applicant:* Joseph Wilson, Penguin Films Ltd, 1 St Augustine's Lane, Bristol BS1 5DE United Kingdom.

*Activity for Which Permit is Requested:* ASPA entry. The applicant requests entry to Cape Crozier, ASPA 124, and Cape Royds, ASPA 121, in order to film an Adelie penguin documentary film for Disney. The applicant and team would use long lens filming techniques, which allows the camera person to be at a distance from the animals to capture natural behaviors. The work would be observational and would not involve interactions with penguins. The team would be working with penguin scientists who conduct work in Cape Crozier and Cape Royds.

*Location:* Cape Crozier, ASPA 124; Cape Royds, ASPA 121.

*Dates:* October 14, 2016–February 10, 2017.

##### Permit Application: 2017-010

2. *Applicant:* Brent S. Stewart, Ph.D., J.D., Hubbs-Seaworld Research Institute, 2595 Ingraham Street, San Diego, CA 92109.

*Activity for Which Permit is Requested:* Take. The applicant is planning to make photographs at terrestrial continental and island locations on the east and west sides of the Antarctic Peninsula, where seabirds roost and breed, to document and observe changes in the physical characteristics of those habitats and the distribution and abundance of seabirds that use them relative to local and regional changes in environmental conditions. The applicant states that brief, minor, incidental disturbance to behaviors of seabirds might be possible, though unlikely, owing to auditory or visual detection by the seabirds of a camera-equipped (e.g., GoPro) aerial telerobot as it passes quickly overhead while making photographs. The remotely operated, battery powered, multi-rotor model aerial telerobot (e.g., DJI Phantom 3 Pro) will be operated from a Zodiac offshore, or from locations on beaches. The aerial telerobot will be operated within line of sight distances (<400 m) and altitudes of 30 to 100 m and for 10 to 20 minutes during each flight. One flight will be made at each location visited and each

location will be visited one to three times each year during the Austral summer (October to March). The applicant has applied for a permit to take the following species and numbers of birds: Less than 30 per year of gentoo penguin (*Pygoscelis papua*), rockhopper penguin (*Eudyptes crestatus*), chinstrap penguin (*Pygoscelis antarctica*), and Adelie penguin (*Pygoscelis adeliae*); and less than 20 per year of brown skua (*Catharacta lonnbergi*), south polar skua (*Catharacta maccormicki*), sheathbill (*Chionis alba*), blue-eyed shag (*Phalacrocorax atriceps*), southern black-backed (kelp) gull (*Larus dominicanus*), and Antarctic tern (*Sterna vittata*).

*Location:* Aitcho Islands; Alcock Island; Ardley Island; Argentine Islands; Astrolabe Island; Baily Head, Deception Island; Barcroft Islands, Biscoe Islands; Bennett Islands, Hanusse Bay; Berthelot Islands; Blaiklock Islands; Bongrain Point, west side of Pourquoi Pas Island; Brown Bluff, Tabarin Peninsula; Camp Point, Eastern Marguerite Bay; Challenger Island, Gerlache Strait; Port Charcot, Booth Island; Christiania Islands; Comb Ridge, Northern James Ross Island; Cormorant Island; Crystal Hill, Prince Gustav Channel; Cuverville Island; Damoy Point, Wiencke Island; Danco Island; Danger Islands; Detaille Island; Devil Island; Cape Dubouzet; Cape Dundas, Eastern Laurie Island; Duthiers Point; Enterprise Island, Gerlache Strait; Cape Evensen; Fildes Peninsula; Fish Islands; Cape Gage, Eastern James Ross Island; Gaston Islands, Gerlache Strait; Georges Point, Northern Ronge Island; Gin Cove, Western James Ross Island; Gosling Islands; Gourdin Island; Half Moon Island; Hannah Point; Heroina Island; Horseshoe Island; Hovgaard Island; Huemel Island; Jonassen Island; Cape Kinnes, Joinville Island; Cape Kjellman; Melchior Islands; Metchnikoff Point, Northern Brabant Island; Murray Island; Orne Islands; Palaver Point; Paulet Island; Pendulum Cove, Deception Island; Penguin Island; Penguin Point, Seymour Island; Petermann Island; Pitt islands; Pleneau Island; Portal Point; Prospect Point, Holtedahl Bay; Ronge Island; Rosamel Island; Rum Cove, James Ross Island; Seymour Island; Shingle Cove, Coronation Island; Skontorp, Cove, Paradise Harbor; Small Island; Snow Hill Island; Spring Point, Hughes Bay; Stonington Island; Torgersen Island, Anvers Island; View Point, Duse Bay, Trinity Peninsula; Whalers Bay, Deception Island; Yalour Islands, Penola Strait; Yankee Harbor, Greenwich Island.

*Dates:* October 1, 2016–September 30, 2021.

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2016-18141 Filed 7-29-16; 8:45 am]

BILLING CODE 7555-01-P

#### NATIONAL SCIENCE FOUNDATION

##### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

##### FOR FURTHER INFORMATION CONTACT:

Nature McGinn, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: [ACAPermits@nsf.gov](mailto:ACAPermits@nsf.gov).

**SUPPLEMENTARY INFORMATION:** On June 24, 2016 the National Science Foundation published a notice in the **Federal Register** of a permit applications received. The permits were issued on July 27, 2016 to:

1. Robert Ferl Permit No. 2017-003.
2. David Ainley Permit No. 2017-005.

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2016-18143 Filed 7-29-16; 8:45 am]

BILLING CODE 7555-01-P

#### NUCLEAR REGULATORY COMMISSION

[Docket No. 50-005; NRC-2016-0153]

##### Pennsylvania State University Breazeale Nuclear Reactor

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a letter dated November 6, 2014, from the Pennsylvania State University (Penn State). In this letter, Penn State requested an exemption from certain regulatory requirements, which, if granted, would allow Penn State to submit its annual financial results within 180 days after the close of each succeeding fiscal year. The NRC staff

has reviewed this request and determined that it is appropriate to grant the exemption, as requested.

**ADDRESSES:** Please refer to Docket ID NRC-2016-0153 when contacting the NRC about the availability of information about this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0153. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For assistance with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *The NRC's PDR:* Examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Xiaosong Yin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1404; email: [Xiaosong.Yin@nrc.gov](mailto:Xiaosong.Yin@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Penn State is holder of Facility Operating License No. R-2, which authorizes operation of the TRIGA Mark III Breazeale Reactor, located at University Park, Pennsylvania. Penn State seeks an extension from 90 to 180 days by exemption from compliance with section 50.75 of title 10 of the *Code of Federal Regulations* (10 CFR), "Reporting and recordkeeping for decommissioning planning," and appendix E, "Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Nonprofit Colleges, Universities, and Hospitals," to 10 CFR part 30, "Rules of

general applicability to domestic licensing of byproduct material." The regulations in 10 CFR part 30, appendix E, require that a nonprofit college, university, or hospital using a self-guarantee for decommissioning funding assurance shall, after the initial financial test, repeat passage of the test and provide financial documentation to the NRC of its continued eligibility to use the self-guarantee 90 days after the close of each succeeding fiscal year.

##### **II. Request/Action**

By letter dated November 6, 2014 (ADAMS Accession No. ML14321A408), Penn State requested that the NRC grant a 90-day extension to the reporting requirements of 10 CFR 50.75 and 10 CFR part 30, appendix E. Penn State made this request under 10 CFR 50.12, "Specific exemptions."

Penn State is currently using a self-guarantee to provide financial assurance for decommissioning, as allowed by 10 CFR 50.75(e)(1)(iii)(C) for nonprofit entities such as universities. The regulation states that ". . . a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to 10 CFR part 30."

The regulations in 10 CFR part 30, appendix E, require all entities using a self-guarantee to provide financial assurance for decommissioning to submit annual financial tests within 90 days after the close of each succeeding fiscal year to demonstrate their continued eligibility.

The regulations in 10 CFR 50.12 allow the NRC to grant exemptions to the requirements in 10 CFR part 50, "Domestic licensing of production and utilization facilities," if it deems that the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The regulations in 10 CFR 50.12 also specify that the NRC will not consider granting an exemption unless special circumstances are present; for example, application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule, or compliance would result in undue hardship.

Penn State requests an exemption from the requirement to submit its annual financial results information within 90 days after the close of each succeeding fiscal year. Instead, Penn State's exemption request asks to submit this information within 180 days after the close of each succeeding fiscal year.

According to Penn State, the requested exemption is permissible under 10 CFR 50.12 because it will not present a risk to public health and safety, it is consistent with the common defense and security, and the 90-day requirement is not necessary to achieve the underlying purpose of the decommissioning funding rule. Penn State states that it presented the basis for a longer financial recertification time period during the license renewal process (see ADAMS Accession No. ML092650603) and claims that the 90-day rule presents an undue hardship for Penn State. Specifically, Penn State's final financial statements are not available within 90 days of the close of its fiscal year. In part, this is a result of the time necessary for auditing the university finances as a whole, not just the finances for the Breazeale Reactor, which makes the process complex and longer to complete. In addition, Penn State asserts that the requested exemption in no way reduces the effectiveness of the approved decommissioning plan.

Based on the staff's review of Penn State's request for exemption, the NRC believes that Penn State's comprehensive financial reviewing process, which involves Penn State's book balancing, external audits, and the internal approval processes for recertification, does present a special circumstance whereby the 90-day rule will result in an undue hardship to Penn State. In addition, the NRC believes that allowing Penn State to submit its annual financial results within 180 days instead of 90 days after the close of the succeeding fiscal year will not reduce the effectiveness of its currently approved decommissioning funding plan. Furthermore, the NRC finds that granting this exemption will not present an undue risk to public health and safety, is consistent with the common defense and security, and does not undermine the intent of the stated regulations. Therefore, the NRC has elected to grant Penn State an exemption to the requirement of 10 CFR part 50 and appendix E to 10 CFR part 30, allowing Penn State to submit its annual financial results within 180 days of the close of the succeeding fiscal year.

The NRC notes that Penn State has made good faith efforts to comply with these annual financial reporting requirements. The NRC also notes that the Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection, issued a similar exemption to Penn State's Type A Broad Scope license (Commonwealth of Pennsylvania PA-0100).

### III. Discussion

#### *The Exemption Is Authorized by Law*

The staff concluded that 10 CFR 50.12 allows for an exemption to the requirements of the regulations in 10 CFR 50.75 and appendix E to 10 CFR part 30.

#### *The Exemption Presents No Undue Risk to Public Health and Safety*

The staff determined that the exemption is related to the Penn State financial surety self-guarantee annual reporting, which does not involve Penn State's reactor operation and safety aspects. Therefore, the exemption presents no undue risk to public health and safety.

#### *The Exemption Is Consistent With the Common Defense and Security*

The staff determined that the exemption is related to the Penn State financial surety self-guarantee annual reporting, which does not involve Penn State's reactor operation and safety aspects. Therefore, granting the exemption will have no effect on the common defense and security.

#### *Environmental Considerations*

The staff determined that granting an exemption from the requirements of 10 CFR part 50 and appendix E to 10 CFR part 30 belongs to a category of regulatory actions eligible for categorical exclusion. Since this exemption involves only Penn State's self-guarantee financial surety reporting and does not involve the operations of the Penn State Breazeale Reactor, there is no significant hazards consideration, there is no significant change in the types or significant increase in the amounts of any effluents that may be released off site, there is no significant increase in individual or cumulative public or occupational radiation exposure, there is no significant construction impact; and there is no significant increase in the potential for or consequences from radiological accidents as a result of the NRC granting this exemption. The requirements from which the exemption is sought involve surety, insurance, or indemnity requirements. The exemption meets all categorical exclusion requirements of 10 CFR 51.22(c)(25)(i) through (vi). Therefore, in accordance with 10 CFR 51.22(c)(25)(vi)(H), the staff determines that an environmental review is not required.

### IV. Conclusion

The NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to public health

and safety, and is consistent with the common defense and security. Therefore, the NRC hereby grants Penn State an exemption to the requirements in 10 CFR part 50 and appendix E to 10 CFR part 30. As a result of this exemption, Penn State shall submit its annual financial results within 180 days after the close of each succeeding fiscal year.

Dated at Rockville, Maryland, this 25th day of July, 2016.

For the Nuclear Regulatory Commission.

**Mirela Gavrilas,**

*Deputy Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2016-18144 Filed 7-29-16; 8:45 am]

**BILLING CODE 7590-01-P**

### NUCLEAR REGULATORY COMMISSION

#### **Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on AP1000**

The ACRS Subcommittee on AP1000 will hold a meeting on August 18-19, 2016, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Thursday, August 18, 2016 and Friday, August 19, 2016—8:30 a.m. until 5:00 p.m.*

The Subcommittee will review the combined license application (COLA) for Turkey Point Units 6 and 7, and the associated NRC staff's advanced safety evaluation (ASE). The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Florida Power & Light Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mr. Peter Wen (Telephone 301-415-2832 or Email: [Peter.Wen@nrc.gov](mailto:Peter.Wen@nrc.gov)) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy

cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO.

Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: July 26, 2016.

**Mark L. Banks,**

*Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2016-18145 Filed 7-29-16; 8:45 am]

**BILLING CODE 7590-01-P**

### NUCLEAR REGULATORY COMMISSION

#### **Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection; Notice of Meeting**

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on August 16, 2016, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Tuesday, August 16, 2016—8:30 a.m. until 12:00 p.m.*

The Subcommittee will review the draft final Regulatory Guide 1.26,

Revision 5 (DG-1314) "Quality Group Classifications and Standards for Water-, Steam-, and Radioactive-Waste-Containing Components of Nuclear Power Plants." The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Weidong Wang (Telephone 301-415-6279 or Email: [Weidong.Wang@nrc.gov](mailto:Weidong.Wang@nrc.gov)) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 13, 2014 (79 FR59307-59308).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: July 26, 2016.

**Mark L. Banks,**

*Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2016-18147 Filed 7-29-16; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Reliability and PRA**

The ACRS Subcommittee on Reliability and PRA will hold a meeting on August 15, 2016, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Monday, August 15, 2016—8:30 a.m. Until 12:00 p.m.**

The Subcommittee will be on the progress of updating Draft Regulatory Guide 1.174, Revision 3 (DG-1285) by the staff. The Subcommittee will hear presentations by and hold discussions with the NRC staff and interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301-415-5197 or Email: [John.Lai@nrc.gov](mailto:John.Lai@nrc.gov)) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>.

[rm/doc-collections/acrs](http://www.nrc.gov/reading-rm/doc-collections/acrs). Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: July 26, 2016.

**Mark L. Banks,**

*Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2016-18149 Filed 7-29-16; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-131; NRC-2016-0154]**

### **U.S. Department of Veterans Affairs; Alan J. Blotcky Reactor Facility**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License termination; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is providing notice of the termination of Facility Operating License No. R-57 for the Alan J. Blotcky Reactor Facility (AJBRF). The NRC has terminated the license of the decommissioned AJBRF at the U.S. Department of Veterans Affairs (VA or the licensee) facility in Omaha, Nebraska, and has released the site for unrestricted use.

**DATES:** Notice of termination of Facility Operating License No. R-57 given on August 1, 2016.

**ADDRESSES:** Please refer to Docket ID NRC-2016-0154 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0154. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463;

email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Kim Conway, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-1335; email: [Kimberly.Conway@nrc.gov](mailto:Kimberly.Conway@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The AJBRF in Omaha, Nebraska, was operated by the Omaha Veterans Administration Medical Center (VAMC) to support nuclear medicine and research programs conducted at the Omaha VAMC. Between 1959 and 1965, the facility was funded as a national laboratory and employed approximately 30 people. The AJBRF was primarily used for neutron activation of biological samples, but was also used for training Fort Calhoun Station nuclear power reactor operators.

By letters dated September 21, 2004, August 15, 2011, March 8, 2012, May 21, 2014, and November 12, 2014, (ADAMS Accession Nos. ML042740512, ML11255A334, ML12075A202, ML14150A404 (Package), ML14335A597, respectively), the licensee submitted to the NRC an application for amendment of Facility Operating License No. R-57 for AJBRF. The application requested NRC approval of the AJBRF decommissioning plan (DP). The NRC approved the revised VA DP by Amendment No. 12 to License R-57, dated January 8, 2015 (ADAMS Package Accession No. ML14318A624).

As required by the approved DP, the VA submitted a Final Status Survey

(FSS) Plan, dated October 15, 2015 (ADAMS Accession No. ML15299A385), as a supplement to the DP. By letter dated November 4, 2015 (ADAMS Accession No. ML15302A508), the NRC reviewed the FSS Plan and determined that it was consistent with the guidance in NUREG-1757, "Consolidated Decommissioning Guidance" (ADAMS Accession No. ML063000243); and NUREG-1575, "Multi-Agency Radiation Survey and Site Investigation Manual" (ADAMS Accession No. ML082470583).

On February 29, 2016, the VA submitted its FSS Report (ADAMS Accession No. ML16068A254) and requested termination of the AJBRF license. The report demonstrates that the criteria for termination, set forth in its DP and FSS Plan, have been satisfied. The FSS Report indicates that all individual radiological measurement determinations made throughout the facility for surface contamination (both total and removable) were found to be less than the criteria established in the DP. Similarly, all sample results were found to be less than the volumetric radionuclide concentration criteria established in the DP. Additionally, all the radioactive wastes have been removed from the facility, and documentation regarding its removal disposition is provided in the FSS Report. As such, the NRC staff determined that the survey results in the report comply with the criteria in the NRC-approved DP and the release criteria in subpart E of part 20 of title 10 of the *Code of Federal Regulations* (10 CFR).

On September 21-23, 2015 (ADAMS Accession No. ML15316A495), Region IV of the NRC conducted a routine safety inspection at the AJBRF. The inspection was an examination of the VA's licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions, including the DP and FSS Plan. The inspection consisted of observations by the inspectors, interviews with personnel, and a review of procedures and records. No health and safety concerns were identified during these inspections.

On December 8-9, 2015, Oak Ridge Associated Universities (ORAU) performed confirmatory surveys. The survey activities performed included cursory gamma scans, 100 percent of the facility floor, judgment scans of surfaces (based on unusual appearance, location relative to known contaminated areas, and high potential for residual radioactivity), direct measurements, and smear collection (wet and dry). The ORAU provided the results of the confirmatory surveys in a report dated

February 24, 2016 (ADAMS Accession No. ML16173A165). The ORAU report showed that results of all samples were less than the volumetric radionuclide concentration criteria established in the DP.

Based on observations during NRC inspections, decommissioning activities have been carried out by the VA in accordance with the approved AJBRF DP. Additionally, NRC staff evaluated the VA's FSS Report and the results of the independent confirmatory survey conducted by ORAU. All FSS Report measurements were found to be less than the DP and FSS Plan criteria, and ORAU's analytical results from independent confirmatory surveys were consistent with the VA's FSS Report results. Therefore, the NRC staff has concluded that the VA AJBRF has completed decommissioning in accordance with the approved DP. The NRC staff evaluated the VA AJBRF FSS Report, DP, and associated documentation and determined that the facilities and site are suitable for unrestricted release in accordance with the criteria for license termination in 10 CFR part 20, subpart E. By letter dated July 22, 2016 (ADAMS Accession No. ML16173A093), the licensee was informed of the license termination.

Therefore, pursuant to 10 CFR 50.82(b)(6), Facility Operating License No. R-57 is terminated.

Dated at Rockville, Maryland, this 22nd day of July 2016.

For the Nuclear Regulatory Commission.

**John R. Tappert,**

*Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2016-18142 Filed 7-29-16; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on NUSCALE; Notice of Meeting**

The ACRS Subcommittee on NuScale will hold a meeting on August 16, 2016, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Tuesday, August 16, 2016—1:00 p.m.  
Until 5:00 p.m.

The Subcommittee will hear a briefing on the NRC staff's NuScale Safety Focused Review approach in preparation of the NuScale Design Certification application. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mike Snodderly (Telephone 301-415-2241 or Email: [Mike.Snodderly@nrc.gov](mailto:Mike.Snodderly@nrc.gov)) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015, (80 FR 63846).

Detailed meeting agenda and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained

from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: July 26, 2016.

**Mark L. Banks,**

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016-18148 Filed 7-29-16; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL SERVICE

### Mail Classification Schedule Changes Concerning Assignment of Country Groups

**AGENCY:** Postal Service.

**ACTION:** Notice; assignment of country groups.

**SUMMARY:** The Governors of the Postal Service have assigned country price groups within the Mail Classification Schedule to provide Priority Mail Express International service to Cuba effective August 28, 2016.

**DATES:** *Effective date:* June 21, 2016.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey A. Rackow, 202-268-6687.

**SUPPLEMENTARY INFORMATION:** The Governors' Decision in connection with the assignment of country groups is reprinted below.

**Stanley F. Mires,**

Attorney, Federal Compliance.

Decision of the Governors of the United States Postal Service Concerning

Assignment of Country Groups in the Mail Classification Schedule (Governors' Decision No. 16-4)

June 21, 2016

### Statement of Explanation and Justification

The Postal Service and the postal operator of Cuba intend to exchange expedited shipments known as EMS, which is branded as Priority Mail Express International (PMEI) service for U.S. origin shipments. Pursuant to section 404(b) and Chapter 36 of Title 39, United States Code, the Governors hereby assign country price groups in the Mail Classification Schedule for PMEI destined to Cuba.

### Order

The classification changes as set forth herein shall be effective on August 28, 2016. I also direct Management to file with the Postal Regulatory Commission appropriate notice of this change.

By The Governors:

James H. Bilbray

Chairman, Temporary Emergency Committee of the Board of Governors  
Attachment to Governors' Decision No. 16-4

### Mail Classification Schedule

\* \* \* \* \*

### Part D

#### Country Price Lists For International Mail

\* \* \* \* \*

Attachment to Governors' Decision No. 16-4

4000 Country Price Lists For International Mail

### Competitive

Country	Market dominant SPFCMI <sup>1</sup>	FCPIS <sup>2</sup>	International Expedited Services			PMI <sup>5</sup>	PMI flat rate envelopes and boxes <sup>5</sup>	IPA & ISAL <sup>6</sup>
			GXG <sup>3</sup>	PMEI <sup>4</sup>	PMEI flat rate envelope <sup>4</sup>			
* .....	*	*		*	*		*	*
Cuba .....	9	9	—	9	8	9	8	17
* .....	*	*		*	*		*	*



[FR Doc. 2016-18173 Filed 7-29-16; 8:45 am]

BILLING CODE 7710-12-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78420; File No. SR-IEX-2016-02]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rule 11.230 To Rename the “Router Plus” Routing Option to “Router”

July 26, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 13, 2016, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>5</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend subparagraph (c)(2) of Rule 11.230 (Order Execution) to rename the Router Plus routing option to Router.

The text of the proposed rule change is available at the Exchange’s Web site at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements [sic] may be examined at the places specified in Item

IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to change the references in Rule 11.230(c)(2) from “Router Plus” to “Router,” consistent with the Exchange’s re-branding of its routing options prior to Exchange launch. The name change from Router Plus to Router is a non-substantive change. No changes to the functionality of this routing option are proposed.

Currently, subparagraph (c) of Rule 11.230 describes two routing options offered by the Exchange: Router Basic and Router Plus. The proposed change would merely rename Router Plus to Router. Router Basic is a routing option under which an order is sent to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the Order Book or canceled, as per User instruction. Once posted on the Order Book, the unexecuted portion of such an order is eligible for the re-sweep behavior described in paragraph (3), market conditions permitting. Router Plus (which as proposed, would be retitled Router) is a routing option under which an order is sent to the Order Book to check for available shares and then any remainder is sent to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the Order Book or canceled, as per User instruction. Once posted on the Order Book, the unexecuted portion of such an order is eligible for the re-sweep behavior described in paragraph (3), market conditions permitting. As stated above, the proposed change would merely rename Router Plus to Router.

##### 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act<sup>6</sup> in general and with Sections 6(b)<sup>7</sup> of the Act<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the

mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposed rule change is a stylistic change to remove the word “plus” in the name of the router option consistent with the Exchange’s re-branding of its routing options prior to Exchange launch. Accordingly, the Exchange believes this nonsubstantive change will make the Exchange’s rules clearer for market participants by removing unnecessary verbiage.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

IEX does not believe that the proposed rule change will impose any burden on competition, because the Exchange is not proposing any substantive changes to Rule 11.230(c)(2).

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)<sup>9</sup> of the Act and Rule 19b-4(f)(6)<sup>10</sup> thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>11</sup> The Exchange notes that its proposal makes a stylistic, non-substantive change and has asked the Commission to waive the 30-day operative delay, making this proposal operative upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the Exchange is not

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

substantively altering the routing options it offers but rather is amending the terminology it uses to identify one particular routing option. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File SR-IEX-2016-02 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-IEX-2016-02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2016-02 and should be submitted on or before August 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-18056 Filed 7-29-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78416; File No. SR-IEX-2016-01]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Collection of Exchange Fees and Other Claims and Billing Policy

July 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on July 12, 2016, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 15.120 and entitle it "Collection of Exchange Fees and Other Claims and Billing Policy" that (a) requires each IEX Member, and all applications for membership, to provide a clearing account number for an account at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to debit certain fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange; and (b) require [sic] IEX Members to submit billing disputes within a certain time period.

The text of the proposed rule change is available at the Exchange's Web site at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement [sic] may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to adopt Rule 15.120 to (a) require each IEX Member, and all applications for membership, to provide a clearing account number for an account at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to debit certain fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange; and (b) require IEX Members to submit billing disputes within a certain time period.

###### Direct Debit Process

As proposed, paragraph (a) of Rule 15.120 requires IEX Members, and all applicants for membership, to provide a

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

clearing account number for an account at NSCC for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges pursuant to Rule 15.110, including the Exchange Fee Schedule thereto; Regulatory Transaction Fees pursuant to Rule 15.110(b); dues, assessments and other charges pursuant to Rule 2.200 to the extent the Exchange were to determine to charge such fees; and fines, sanctions and other charges pursuant to Chapters 8 and 9 of the IEX Rulebook<sup>5</sup> which are due and owing to IEX (collectively "Debit Amount"). The Exchange Fee Schedule specifies charges for transactions, routing and other services provided by the Exchange and certain fees that are collected by the Financial Industry Regulatory Authority ("FINRA"). Only the charges which require payment to the Exchange would be subject to direct debit. The Exchange does not currently charge fees for certain of the services listed on the Exchange Fee Schedule. The Exchange would entitle Rule 15.120 "Collection of Exchange Fees and Other Claims and Billing Policy."

As proposed, the Exchange will send a monthly electronic invoice by email to each Member, generally by the 12th day of each month for the Debit Amount due to IEX for the prior month. IEX will also send files to NSCC each month by the 28th day of each month to initiate the debit of the Debit Amount due to IEX as stated on the Member's invoice for the prior month. If the 28th day of the month is not a business day, IEX will send the files to NSCC by the preceding business day. IEX anticipates that NSCC will process the debits on the day it receives the file or the following business day. Because Members will

receive an invoice approximately two weeks before the debit date, Members will have adequate time to contact IEX staff with any questions concerning their invoice. If an IEX Member disagrees with the invoice in whole or in part, the Exchange would not commence the debit for the disputed amount until the dispute is resolved. Specifically, the Exchange will not include the disputed amount (or the entire invoice if it is not feasible to identify the disputed amounts) in the NSCC Debit Amount if the Member has provided written notification of the dispute to the IEX accounting department at [accounting@iextrading.com](mailto:accounting@iextrading.com) by the later of the 25th of the month (or the following business day if the 25th is not a business day) or ten days after the date the electronic invoice was sent to the Member, and the amount in dispute is at least \$10,000 or greater.

Once NSCC receives the file from the Exchange, NSCC would proceed to debit the amounts indicated from the clearing Members' account and disburse such amounts to the Exchange. In the instance where the Member clears through an IEX clearing member, the Exchange understands that the estimated transaction fees owed to the Exchange are typically debited by the IEX clearing Member on a daily basis using daily transaction detail reports provided by the Exchange to the IEX clearing Member in order to ensure adequate funds have been escrowed.

The Exchange believes that the proposed debiting process for IEX members would create an efficient method of collecting undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange. Collection matters could divert staff resources away from the Exchange's regulatory and business purposes. Moreover, the Exchange believes that it is reasonable to provide for a \$10,000 limitation on pre-debit billing disputes since it would be inefficient to delay a direct debit for a *de minimis* amount. Members will still be able to dispute billing amounts that are less than \$10,000 pursuant to paragraph (b) of Rule 15.120, as described below. The Exchange notes that a comparable debiting process is used by the NASDAQ Stock Market, NASDAQ OMX BX and NASDAQ OMX Phlx.<sup>6</sup>

## Billing Dispute Process

In addition to, and separate from, the pre-debit dispute process described above, the Exchange also proposes to adopt a billing policy, pursuant to paragraph (b) of Rule 15.120 to require all pricing disputes, with respect to fees payable to the Exchange,<sup>7</sup> to be submitted to the Exchange in writing<sup>8</sup> and accompanied by supporting documentation within sixty days of receipt of an invoice. The Exchange believes that this policy will conserve Exchange resources, which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the invoice was issued. The sixty-day limitation would be applicable to all fees specified in paragraph (a) of Rule 15.120.

The Exchange expects that the proposed policy will provide a potential cost savings to the Exchange in that it would alleviate administrative burdens related to belated billing disputes, which could divert staff resources away from the Exchange's regulatory and business purposes. A similar policy is in place today at the NASDAQ Stock Market.<sup>9</sup>

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the direct debit process will provide IEX Members with an efficient process to pay undisputed or final fees, fines, charges and/or monetary sanctions or monies due and owing to the Exchange. Similarly, the billing policy will set an objective process and will be fair to Members. Further, both aspects of the proposal are

<sup>5</sup> This includes, among other things, fines and sanctions which result from disciplinary proceedings or actions taken pursuant to Chapters 8 and 9 of the IEX Rules, as specified in Rule 8.310. In addition, the IEX notes that it also has authority under Rules 8.350 and 9.553 to suspend, cancel or bar a Member that fails to pay final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges pursuant to Rule 15.110, including the Exchange Fee Schedule thereto. While this direct debit process should minimize failures to pay, those rules nevertheless will act as a backstop to the direct debit process. With respect to disciplinary proceedings, the Exchange would not debit any monies until such action is final. The Exchange would not consider an action final until all appeal periods have run and/or all appeal timeframes are exhausted. With respect to non-disciplinary actions, the Exchange would similarly not take action to debit a Member account until all appeal periods have run and/or all appeal timeframes are exhausted. Any uncontested disciplinary or non-disciplinary actions will be debited, and the amount due will appear on the IEX Member's invoice prior to the actual NSCC debit.

<sup>6</sup> See, NASDAQ Stock Market Rule 7007, NASDAQ OMX BX Rule 7011 and NASDAQ OMX Phlx Rule 909.

<sup>7</sup> Fees that are collected by FINRA would not be subject to the billing policy, and any disputes would need to be raised by the Member directly with FINRA.

<sup>8</sup> The Exchange invoice will specify that billing disputes must be submitted to [accounting@iextrading.com](mailto:accounting@iextrading.com).

<sup>9</sup> See, NASDAQ Stock Market Rule 7007.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

expected to result in lower administrative costs for the Exchange.

The Exchange believes that its proposal to debit NSCC accounts is reasonable because it would ease the IEX Member's administrative burden in paying monthly invoices, avoid overdue balances and provide efficient collection from all IEX members who owe monies to the Exchange. Moreover, the Exchange believes that the 10-day minimum time frame that will be provided to Members to dispute invoices is reasonable and adequate to enable Members to identify potentially erroneous charges. In addition, the Exchange believes that the \$10,000 limitation on pre-debit billing disputes is reasonable because it would be inefficient to delay a direct debit for a *de minimis* amount. Members will still be able to dispute billing amounts that are less than \$10,000 pursuant to paragraph (b) of Rule 15.120.

Further, the Exchange believes that the requirement that billing disputes for specified fees be submitted to the Exchange within sixty days from receipt of the invoice will set objective standards, will be fair to Members, and that sixty days is ample time to review an invoice and dispute any pricing related to the transactions for that time period. It is also expected to lower the Exchange's administrative costs. An identical provision is applicable to NASDAQ Stock Market, NASDAQ OMX BX and NASDAQ OMX Phlx.<sup>12</sup>

#### B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. With this proposal, the proposed debit process and billing policy would apply uniformly to all IEX members.

Further, this proposal is expected to provide a cost savings to the Exchange in that it would alleviate administrative processes related to the collection of monies owed to the Exchange by Members. Collection matters divert staff resources away from the Exchange's regulatory and business purposes. In addition, the debiting process would mitigate against IEX Member accounts becoming overdue.

The Exchange does not believe that the proposal will create an intermarket burden on competition since the Exchange will only debit fees (other than *de minimis* fees below \$10,000)

that are undisputed by the Member and Members will have a reasonable opportunity to dispute fees both before and after the direct debit process. The Exchange also does not believe that the proposal will create an intramarket burden on competition, since the proposed direct debit process and billing policy will be applied equally to all Members. Moreover, other exchanges use a comparable process which IEX believes is generally familiar to Members. Consequently, IEX does not believe that the proposal raises any new or novel issues that have not been previously considered by the Commission in connection with direct debit and billing policies of other exchanges.<sup>13</sup>

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative at the time of the launch of its operation as a national securities exchange. The Exchange

stated that such waiver will allow the Exchange to implement a consistent process for its members to pay undisputed or final fees, fines, charges and/or monetary sanctions or monies due and owing to the Exchange. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow IEX to implement a rule that provides a process similar to that used by other exchanges for the direct debit of certain fees, fines, and charges, and also provides a mechanism to protect IEX members if they choose to contest an invoice. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2016-01 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-IEX-2016-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> See, NASDAQ Stock Market Rule 7007, NASDAQ OMX BX Rule 7011 and NASDAQ OMX Phlx Rule 909.

<sup>13</sup> See note 7 [sic].

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2016-01, and should be submitted on or before August 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2016-18054 Filed 7-29-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78414; File No. NYSEArca-2016-79]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Virtus Japan Alpha ETF Under NYSE Arca Equities Rule 8.600

July 26, 2016.

#### I. Introduction

On May 24, 2016, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares

("Shares") of the Virtus Japan Alpha ETF ("Fund") under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"). The proposed rule change was published for comment in the **Federal Register** on June 9, 2016.<sup>3</sup> On June 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

#### II. Exchange's Description of the Proposal

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively managed exchange-traded fund ("ETF"). The Shares will be offered by Virtus ETF Trust II ("Trust"), which is registered with the Commission as an open-end management investment company.<sup>5</sup> Virtus ETF Advisers LLC will serve as the investment adviser to the Fund ("Adviser"). Euclid Advisors LLC will serve as the Fund's sub-adviser ("Sub-Adviser"). ETF Distributors LLC will be the principal underwriter and distributor of the Fund's Shares, Virtus ETF Solutions LLC will serve as the administrator for the Fund, and the Bank of New York Mellon will serve as accounting services administrator, custodian, and transfer agent for the Fund. The Exchange further states that the Adviser and Sub-Adviser are not registered broker-dealers but are affiliated with a broker-dealer and each has implemented a "fire wall" with respect to such broker-dealer regarding

access to information concerning the composition and/or changes to the Fund's portfolio.<sup>6</sup>

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including the Fund's portfolio holdings and investment restrictions.<sup>7</sup>

#### A. Exchange's Description of the Fund's Principal Investments

Under normal circumstances,<sup>8</sup> the Fund will invest not less than 80% of its assets in the common stocks of certain Japanese companies listed in the JPX-Nikkei 400 Total Return Index ("Index"), a free-float adjusted market-capitalization-weighted equity index composed of 400 Tokyo Stock Exchange-listed securities, and in the financial instruments listed below in this section.

The Fund will be actively-managed through the selection, at any given time, of approximately 80-100 common stocks from the Index based on quantitative and qualitative factors, including an assessment of the following characteristics: cash flow return on invested capital; earnings quality and momentum; operational quality; corporate governance policies; and capital stewardship. The Fund may invest in such Index components by directly purchasing shares of common stock or investing in American

<sup>6</sup> See Notice, *supra* note 3, 81 FR at 37223. The Exchange further represents that in the event (i) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer or (ii) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Exchange represents that such adviser or sub-adviser, as applicable, will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. See *id.*

<sup>7</sup> The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, among other things, can be found in the Notice, Amendment No. 1, and the Registration Statement, as applicable. See Notice, Amendment No. 1, and Registration Statement, *supra* notes 3, 4, and 5, respectively.

<sup>8</sup> The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. See Amendment No. 1, *supra* note 4 at 5-6.

<sup>19</sup> 17 CFR 200.30-3(a)(12) and (59).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 77992 (Jun. 3, 2016), 81 FR 37222 ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange made minor, clarifying changes to the description of the Fund, including, among other things, the Fund's permitted investments, restrictions on investments, calculation of net asset value ("NAV"), and publicly available information relating to the Fund and its investments. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2016-79/nysearca201679-1.pdf>.

<sup>5</sup> According to the Exchange, the Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act"). The Exchange also states that, on February 26, 2016, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-206600 and 811-23078) ("Registration Statement"). The Exchange also states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Notice, *supra* note 3, 81 FR at 37222-37223.

Depository Receipts (“ADRs”)<sup>9</sup> on the common stock of such Index components. Securities held by the Fund may be underweighted or overweighted relative to their positions in the Index.

Although the Fund will focus on investment in securities in the Index as described above, the Fund may also invest in common stocks of other Japanese companies with characteristics similar to those listed on the Index, as determined by the Sub-Adviser. With respect to such common stocks, the Fund will only invest in securities that are listed on the Tokyo Stock Exchange<sup>10</sup> and that have a market capitalization of \$250,000,000 U.S. dollars or greater. The Fund may also invest in exchange-traded and over-the-counter ADRs on those common stocks.<sup>11</sup>

Positions may be reduced or removed when the Sub-Adviser determines that a security has become overweighted within the Fund’s portfolio, that the security’s prospects have adversely changed, that the Fund should raise funds for new or other investments, or that there are more attractive opportunities.<sup>12</sup>

#### B. Exchange’s Description of Other Investments for the Fund

While the Fund, under normal circumstances, will invest at least 80% of its assets in common stock of Japanese companies listed in the Index, common stock of certain other Japanese companies and ADRs, as described above, the Fund may invest its remaining assets in the securities and financial instruments described below.<sup>13</sup>

The Fund may invest in securities index futures contracts and foreign currency futures contracts.<sup>14</sup> In general,

the Fund will not purchase or sell futures contracts unless either (i) the futures contracts are purchased for “bona fide hedging” purposes (as defined under applicable Commodity Futures Trading Commission regulations) or (ii) if purchased for other purposes, the sum of the amounts of initial margin deposits and premiums required to establish the positions on the Fund’s existing futures would not exceed 5% of the liquidation value of the Fund’s total assets.<sup>15</sup>

The Fund may also invest in forward contracts and non-deliverable forward (“NDF”) contracts on the foreign currency spot market.<sup>16</sup>

The Fund may invest in when-issued and forward-commitment securities (which means that delivery and payment would take place a number of days after the date of the commitment to purchase), if the Fund holds sufficient liquid assets to meet the purchase price.<sup>17</sup>

The Fund may invest in the following equity securities: common stocks traded on U.S. or Japanese securities exchanges (other than the Tokyo Stock Exchange); common stocks traded in the over-the-counter market; U.S. and foreign exchange-traded preferred stocks; U.S. and foreign exchange-traded convertible preferred stocks; U.S. and foreign exchange-traded convertible bonds; U.S. and foreign exchange-traded warrants; and U.S. and foreign exchange-traded rights. The Fund will not invest in ADRs on any of these equity securities.<sup>18</sup>

In addition, the Fund may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder, other exchange-traded and non-exchange traded open-end investment companies, including other ETFs.<sup>19</sup>

The Fund may invest in Currency Trust Shares.<sup>20</sup>

The Fund may invest in real estate investment trusts (“REITs”) traded on U.S. exchanges and Japanese exchanges.<sup>21</sup>

The Fund may enter into short sales of securities. The Fund may also enter into short sales “against the box,” *i.e.*, when the Fund sells a security short while owning a securities equivalent in kind and amount to the securities sold short (or securities convertible or exchangeable into such securities) and will hold such securities while the short sale is outstanding.<sup>22</sup>

The Fund may invest in the following money market instruments: U.S. Government obligations; corporate debt obligations<sup>23</sup> (including, without limitation, those subject to repurchase agreements); banker’s acceptances (credit instruments evidencing the obligation of a bank to pay a draft drawn on it by a customer); certificates of deposit of domestic branches of banks (certificates representing the obligation of a bank to repay funds deposited with it for a specified period of time); commercial paper<sup>24</sup> (unsecured, short-term debt obligation of a bank, corporation, or other borrower); and master notes (unsecured obligations that are redeemable upon demand of the holder and that permit the investment of fluctuating amounts at varying rates of interest).<sup>25</sup>

The Fund may invest assets in shares of money market funds.<sup>26</sup>

The Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political, or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash and cash equivalent positions.<sup>27</sup>

<sup>22</sup> *Id.*

<sup>23</sup> The Adviser expects that under normal market conditions, the Fund will seek to invest at least 75% of its corporate bond assets in issuances that have at least \$100,000,000 par amount outstanding in developed countries or at least \$200,000,000 par amount outstanding in emerging market countries.

<sup>24</sup> The Fund will directly invest in commercial paper only if such commercial paper is rated in one of the two highest rating categories as rated by a major credit agency or, if unrated, will be of comparable quality as determined by the Sub-Adviser. *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Cash equivalents are short-term instruments with maturities of less than 3 months. Short-term instruments shall include the following: (i) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers’ acceptances; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits; (vi) commercial paper; and (vii) money market funds. *Id.*

<sup>9</sup> ADRs, which evidence ownership of underlying securities issued by a foreign corporation, are bought and sold in the United States and are typically issued by a U.S. bank or trust company. No more than 10% of the net assets of the Fund will be invested in ADRs that are not exchange listed. See Notice, *supra* note 3, 81 FR at 37223.

<sup>10</sup> Japan Exchange Regulation (“JPX-R”), an affiliate of the Tokyo Stock Exchange that conducts self-regulatory functions on behalf of the Tokyo Stock Exchange, is a member of the Intermarket Surveillance Group, and information relating to transactions in Tokyo Stock Exchange listed securities is available through JPX-R. See Amendment No. 1, *supra* note 4, at 6.

<sup>11</sup> *Id.*

<sup>12</sup> See Notice, *supra* note 3, 81 FR at 37223.

<sup>13</sup> *Id.*

<sup>14</sup> In instances involving the purchase of futures contracts, the Fund will deposit in a segregated account with its custodian an amount of cash, cash equivalents, or appropriate securities equal to the cost of the futures contracts, to the extent that such deposits are required under the 1940 Act. See *id.* at 37223.

<sup>15</sup> See *id.* at 37223–37224.

<sup>16</sup> See *id.* at 37224.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)), Portfolio Depository Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse ETFs or in leveraged (*e.g.*, 2X, –2X, 3X or –3X) ETFs. See Notice, *supra* note 3, 81 FR at 37224.

<sup>20</sup> Currency Trust Shares are securities such as those described in NYSE Arca Equities Rule 8.202. *Id.*

<sup>21</sup> *Id.*

### C. Exchange's Description of the Fund's Investment Restrictions

The Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a "regulated investment company" for purposes of the Internal Revenue Code of 1986.<sup>28</sup>

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.<sup>29</sup> Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>30</sup>

The Fund will not invest in options or swaps.<sup>31</sup>

The Fund's investments will be consistent with the Fund's investment objective and will not be used to produce leveraged returns. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.* 2Xs and 3Xs) of the Index.<sup>32</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>33</sup> In particular, the

Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act,<sup>34</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>35</sup> which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

According to the Exchange, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line.<sup>36</sup> On each business day, before commencement of trading in Shares in the Core Trading Session<sup>37</sup> on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio for the Fund (as defined in NYSEArca Equities Rule 8.600(c)(2)) that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>38</sup> In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3),<sup>39</sup> will be widely disseminated at least every 15 seconds

during the Exchange's Core Trading Session by one or more major market data vendors.<sup>40</sup> The Fund's NAV will be determined as of the close of the regular trading session on the New York Stock Exchange ("NYSE") (normally at 4:00 p.m., Eastern Time) on each day that the NYSE is open for trading.<sup>41</sup> The Fund's Web site will include a form of the prospectus for the Fund, as well as additional quantitative information updated on a daily basis.<sup>42</sup> Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.<sup>43</sup> Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.<sup>44</sup>

Intra-day, closing, and settlement prices of U.S. exchange-listed equity

<sup>40</sup> Currently, it is the Exchange's understanding that several major market data vendors display or make widely available Portfolio Indicative Values taken from CTA or other data feeds. *Id.*

<sup>41</sup> *Id.* at 37224. According to the Exchange, in determining the value of the Fund's assets, U.S. and foreign exchange-traded equity securities, including shares of common stocks, preferred stocks, convertible preferred stocks, convertible bonds, warrants, rights, ETFs, REITs, Currency Trust Shares, and exchange-traded ADRs, generally will be valued at market value using quotations from the primary market on which they are traded. The Fund normally will use third party pricing services to obtain market quotations. Common stocks and ADRs traded in the over-the-counter markets will be priced utilizing market quotations provided by approved pricing services or by broker quotation. Money market instruments and cash equivalents will be valued on the basis of broker quotes or valuations provided by a third party pricing service, which in determining value utilizes information regarding recent sales, market transactions in comparable securities, quotations from dealers, and various relationships between securities. Futures contracts will generally be valued at the settlement price of the relevant exchange. Investments in other open-end investment companies (other than ETFs) that are registered under the 1940 Act, including money market funds, will be valued based upon the NAVs reported by those registered open-end investment companies. NDFs and forward contracts will be valued intraday using market quotes or another proxy as determined to be appropriate by a third party market data provider. Securities and assets for which market quotations are not readily available, or that cannot be accurately valued using the Fund's normal pricing procedures, will be valued by the Trust's Fair Value Pricing Committee at fair value as determined in good faith under policies approved by the Board. In addition, the Trust may fair value foreign equity portfolio securities each day the Trust calculates the Fund's NAV. Pursuant to policies adopted by the Board, the Adviser will consult with Bank of New York Mellon and the Sub-Adviser on a regular basis regarding the need for fair value pricing. The Board will monitor and evaluate the Fund's use of fair value pricing, and will periodically review the results of any fair valuation under the Trust's policies. *See* Amendment No. 1, *supra* note 4 at 10–12.

<sup>42</sup> *Id.* at 14.

<sup>43</sup> *Id.* at 16.

<sup>44</sup> *Id.*

<sup>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> 15 U.S.C. 78k–1(a)(1)(C)(iii).

<sup>36</sup> *See* Notice, *supra* note 3, 81 FR at 37226.

<sup>37</sup> The term "Core Trading Session" is defined in NYSE Arca Equities Rule 7.34(a)(2).

<sup>38</sup> On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge. *See* Notice, *supra* note 3, 81 FR at 37226.

<sup>39</sup> The Fund's Portfolio Indicative Value will be calculated based on the current market value of the Fund's portfolio holdings. *Id.* The Portfolio Indicative Value calculation will be an estimate of the value of the Fund's NAV per Share using market data converted into U.S. dollars at the current currency rates. The Portfolio Indicative Value price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. *Id.* at 37227.

<sup>28</sup> 26 U.S.C. 851. *Id.*

<sup>29</sup> Under the supervision of the Board of Trustees of the Trust ("Board"), the Fund will determine the liquidity of the Fund's investments, which will be monitored by the Board pursuant to reports. In determining the liquidity of the Fund's investments, the Fund may consider various factors including, without limitation: (i) The frequency of trades and quotations; (ii) the number of dealers and prospective purchasers in the marketplace; (iii) dealer undertakings to make a market; (iv) the nature of the security (including, without limitation, any demand or tender features; and (v) the nature of the marketplace for trades (including, without limitation, the ability to assign or offset the Fund's rights and obligations relating to the investment). *See* Amendment No. 1, *supra* note 4, at 9–10.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 10.

<sup>32</sup> *See* Notice, *supra* note 3, 81 FR at 37224.

<sup>33</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).



securities (including common stocks, shares of preferred stocks, convertible preferred stocks, convertible bonds, warrants, rights, ETFs, REITs, Currency Trust Shares and ADRs) will be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Intra-day, closing, and settlement prices of non-U.S. exchange-listed equity securities (including common stocks, REITs traded on Japanese exchanges, preferred stocks, convertible preferred stocks, convertible bonds, warrants, and rights), will be available from the foreign exchanges on which such securities trade as well as from major market-data vendors. Intra-day and closing price information for common stocks and ADRs traded in the over-the-counter markets will be available from major market-data vendors. Price information from brokers and dealers or pricing services will be available for money market instruments, money market funds, cash equivalents, forwards, and NDFs held by the Fund. Quotation and last sale information for futures will be available from the exchange on which they are listed. Price information regarding open-end investment company securities (other than ETFs), including money market funds, will be available from the applicable fund.<sup>45</sup>

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>46</sup> Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted. In addition, trading in the Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.<sup>47</sup> The

Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.<sup>48</sup> In addition, the Exchange states that, while the Adviser and Sub-Adviser are not registered as broker-dealers, the Adviser and Sub-Adviser are affiliated with broker-dealers and that each has implemented a fire wall with respect to that broker-dealer regarding access to information concerning the composition of, and changes to, the portfolio.<sup>49</sup> Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>50</sup> The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>51</sup>

maintenance of a fair and orderly market are present. *Id.*

<sup>48</sup> *Id.* at 37228.

<sup>49</sup> See *id.* at 37223; see also *supra* note 6 and accompanying text. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above. See Amendment No. 1, *supra* note 4, at 5.

<sup>50</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>51</sup> According to the Exchange, FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and the Exchange is responsible for FINRA's performance under this regulatory services agreement. See Notice, *supra* note 3, 81 FR at 37227.

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.<sup>52</sup> In support of this proposal, the Exchange has also represented that:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(3) The Exchange and FINRA will communicate as needed regarding trading in the Shares, ETFs, and certain exchange-traded equity securities underlying the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs and certain exchange-traded equity securities underlying the Shares from those markets and entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, and certain exchange-traded equity securities underlying the Shares from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement ("CSSA"). The Exchange is able to access from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated

<sup>45</sup> *Id.*

<sup>46</sup> See Notice, *supra* note 3, 81 FR at 37227.

<sup>47</sup> These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the

<sup>52</sup> *Id.*

or publicly disseminated; (d) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,<sup>53</sup> as provided by NYSE Arca Equities Rule 5.3.

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets.

(8) Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts shall consist of futures contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA. No more than 10% of the net assets of the Fund will be invested in ADRs that are not exchange-listed.

(9) The Fund's investments will be consistent with the Fund's investment objective and will not be used to produce leveraged returns. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Index.

(10) All ETFs in which the Fund invests will be listed and traded in the U.S. on a national securities exchange and the Fund will not invest in inverse ETFs or in leveraged (*e.g.*, 2X, -2X, 3X or -3X) ETFs.

(11) The Fund will not invest in options or swaps.

(12) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the

Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.<sup>54</sup> If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange's representations, including those set forth above, in the Notice, and in Amendment No. 1 to the proposed rule change. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600, including those set forth in this proposed rule change, as modified by Amendment No. 1, to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act<sup>55</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,<sup>56</sup> that the proposed rule change (SR-NYSEArca-2016-79), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>57</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-18052 Filed 7-29-16; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>54</sup> The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (SR-BATS-2016-04) (approving a proposed rule change to list and trade shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF), available at: <http://www.sec.gov/rules/sro/bats/2016/34-77499.pdf>. In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

<sup>55</sup> 15 U.S.C. 78f(b)(5).

<sup>56</sup> 15 U.S.C. 78s(b)(2).

<sup>57</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78421; File No. SR-C2-2016-013]

### Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule to Amend the Fees Schedule

July 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 14, 2016, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.c2exchange.com/Legal/>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend its Fees Schedule.<sup>3</sup> Specifically, the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange initially filed the proposed fee change on July 1, 2016 (SR-C2-2016-011). On July

<sup>53</sup> See 17 CFR 240.10A-3.

Exchange proposes to increase Maker rebates for simple orders in all equity, multiply-listed index (except Russell

2000 Index ("RUT")), ETF and ETN options classes. Specifically, the Exchange proposes to adopt the

following rates. Listed rates are per contract.

	Penny Classes		Non-Penny	
	Current	Proposed	Current	Proposed
Public Customer .....	(.37)	(.42)	(.75)	(.80)
C2 Market-Maker .....	(.40)	(.45)	(.68)	(.73)
All Other Origins (Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.) .....	(.35)	(.40)	(.60)	(.65)
Trades on the Open .....	(0.00)	(0.00)	(0.00)	(0.00)

The Exchange believes the increased amounts will incentivize more volume to the Exchange. Specifically, the proposed increased rebates are intended to encourage C2 Market-Makers to quote more often and attract market participants to send orders to the Exchange, which will then incent Takers to trade with those orders and quotes. The Exchange notes that the proposed Maker rebate amounts are similar to and in line with the amounts currently assessed for simple, non-complex orders in equity, multiply-listed index, ETF and ETN options classes at other Exchanges.<sup>4</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its

Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change is reasonable because the proposed change provides additional rebates to Makers and is designed to attract additional volume to the Exchange, which benefits all market participants.

The Exchange believes that it is equitable and not unfairly discriminatory to provide higher rebates to Public Customers as compared to other market participants (other than C2 Market-Makers for penny classes) because Public Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Public Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to Public Customers. Finally, all fee and rebate amounts listed as applying to Public Customers will be applied equally to all Public Customers.

The Exchange believes that it is equitable and not unfairly discriminatory to provide higher rebates to Market-Makers as compared to other market participants other than Public Customers (for non-penny options) because Market-Makers, unlike other C2 market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, these lower fees and higher rebates offered to Market-Makers are intended to incent Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all

market participants. Finally, all rebate amounts listed as applying to Market-Makers will be applied equally to all Market-Makers.

The Exchange also believes it is equitable and not unfairly discriminatory to provide lower rebates to all other origins (*i.e.*, Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.). Particularly, the Exchange notes that it believes it's equitable and not unfairly discriminatory to provide lower rebates than it does of Market-Makers, because these market participants do not have the same obligations, such as quoting, as Market-Makers do. The Exchange believes it's equitable and not unfairly discriminatory to assess lower rebate than it does to Public Customers, because, as described above, there is a history of providing preferential pricing to Public Customers as Public Customer liquidity benefits all market participants by providing more trading opportunities. The Exchange notes that the proposed fee and rebate amounts listed will also be applied equally to each of these market participants (*i.e.*, Professional Customers, Firms, Broker/Dealers, non-C2 Market-Makers, JBOs, etc. will be assessed the same amount). It should also be noted that all fee and rebate amounts described herein are intended to attract greater order flow to the Exchange, which should therefore serve to benefit all Exchange market participants.

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to continue to assess no fees and offer no rebates for Trades on the Open because trades on the Open involve the matching of undisplayed pre-opening trading interest. As such, there is, in effect, no Maker or Taker activity occurring. Additionally, the Exchange would like to encourage users to submit pre-opening orders.

14, 2016, the Exchange withdrew that filing and replaced it with this filing.

<sup>4</sup> See *e.g.*, Bats BZX Options Exchange Fee Schedule, Transaction Fees, which lists, for executions in Penny Pilot securities, (1) Customer

Maker rebate of \$0.25 to \$0.53, (2) Market-Maker Maker rebate of \$0.35 to \$0.42, and (3) Firm and Broker Dealer Maker rebate of \$0.36 to \$0.46; and for executions in non-Penny Pilot securities, (1) Customer Maker rebate of \$0.85 to \$1.00, (2)

Market-Maker Maker rebate of \$0.42 to \$0.52, and (3) Firm and Broker Maker rebate of \$0.36 to \$0.67.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

The Exchange lastly believes it's equitable and not unfairly discriminatory to assess higher rebates for non-Penny option classes than Penny option classes because Penny classes and non-Penny classes offer different pricing, liquidity, spread and trading incentives. The spreads in Penny classes are tighter than those in non-Penny classes (which trade in \$0.05 increments). The wider spreads in non-Penny option classes allow for greater profit potential.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different rebates are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances (as described in the "Statutory Basis" section above). For example, Public Customers order flow, as discussed above, enhances liquidity on the Exchange for the benefit of all market participants. There is also a history in the options markets of providing preferential treatment to Public Customers. Additionally, Market-Makers have quoting obligations that other market participants do not have.

The Exchange does not believe that the proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on the Exchange. Further, the proposed rebate amounts are similar to those assessed for similar orders by other exchanges,<sup>8</sup> and therefore should continue to encourage competition. Should the proposed change make C2 a more attractive trading venue for market participants at other exchanges, such market participants may elect to become market participants at C2.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and paragraph (f) of Rule 19b-4<sup>10</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2016-013 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-C2-2016-013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public

Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2016-013, and should be submitted on or before August 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-18057 Filed 7-29-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No.34-78419; File No. SR-Phlx-2016-78]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx Rule 754 (Employees' Discretion as to Customers' Accounts)

July 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 14, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 754 of the Phlx rules. The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f).

<sup>8</sup> See supra note 4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of this proposed rule change is to amend Rule 754, which deals with employees' discretion as to customers' accounts and retitle the rule "Discretionary Power as to Customers' Accounts." As discussed below, the Exchange has determined that these rules are outdated and it is more appropriate to follow the corresponding FINRA rule on this subject matter. Consequently, the Exchange is proposing to amend Rule 754 in the Phlx rules.

Rule 754 concerns employees' discretion as to customers' accounts. The rule requires that no member or member organization shall permit any of his or its employees or any employee of another member or member organization to exercise discretion in the handling of a transaction for a customer of such member organization and no member, member organization, partner, officer or stockholder therein shall delegate to any such employee any discretionary power vested by a customer in such member, organization, partner, officer, or stockholder, unless in either case the prior written authorization of the customer has been received and, if such discretionary authority runs, directly or by re-delegation, to an employee of another member or member organization, the carrying organization must obtain the prior written consent of the employer of the individual authorized to exercise discretion. The rule also requires that a member, partner, or officer in the carrying organization shall approve and initial each discretionary order entered by an employee of such organization or of another member or member organization on the day the order is entered.

Further, the provisions of the rule do not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

The Exchange believes that the updated language in FINRA Rule 2510 would be more appropriate. The language in FINRA Rule 2510 is more comprehensive in that it also covers excessive transactions; the authorization and acceptance of accounts; and the approval and review of transactions for the benefit of customers. The text of the rule is available on the FINRA Web site.

Furthermore, The Nasdaq Stock Market LLC ("NASDAQ") references NASD Rule 2510 (which mirrors FINRA Rule 2510) in place of providing alternative language at NASDAQ Rule 2510, and substantially similar language is used by The New York Stock Exchange, Inc. ("NYSE") at NYSE Rule 408. Therefore changing the rule as proposed would ensure consistency for market participants providing customer account statements to customers which would also benefit customers and avoid the potential for confusion.

Finally, FINRA Rule 2510 has been updated more frequently over the last few years to address issues raised in response to market participant feedback. This feedback is from a broader market participant base than that which is just available to the Exchange, and so making direct reference to this rule is likely to better serve market participants, customers and investors as a whole on an ongoing basis.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>4</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed changes are consistent with just and equitable principles of trade because they update and delete outdated and potentially confusing rule text. Updating Rule 754 will lead to a more comprehensive rule, which ensures

consistency across markets and products, and lends clarity, consistency and certainty to market participants, customers and investors alike. By referencing an existing FINRA rule, the Exchange is also future proofing the rule so that changes made to it to address a wider range of market feedback than that which is just available to the Exchange will be taken into account automatically and consistently.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather it is designed to promote competition among exchanges by removing archaic rules in comparison to the rules of other exchanges. Last, the proposed changes promote clarity in the application of the Exchange's rule by updating the rule to bring it in line with other similar industry rules and eliminating unneeded rule text.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>6</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

<sup>3</sup> 15 U.S.C. 78s(b)(3)(a)(iii).

<sup>6</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2016-78 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2016-78. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2016-78 and should be submitted on or before August 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-18055 Filed 7-29-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-32193; File No. 812-14589]

### New York Life Insurance and Annuity Corporation, et al; Notice of Application

July 26, 2016.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended ("Act") and an order of exemption pursuant to section 17(b) of the Act from section 17(a) of the Act.

*Applicants:* New York Life Insurance and Annuity Corporation ("NYLIAC"); NYLIAC Variable Annuity Separate Account—I ("VA I"), NYLIAC Variable Annuity Separate Account—II ("VA—II"), NYLIAC Variable Annuity Separate Account—III ("VA—III"), NYLIAC Variable Annuity Separate Account—IV ("VA—IV"), NYLIAC Variable Universal Life Separate Account—I ("VUL I"), NYLIAC Corporate Sponsored Variable Universal Life Separate Account—I ("Corporate VUL I"), NYLIAC Private Placement Variable Universal Life Separate Account—I ("Private VUL I"), and NYLIAC Private Placement Variable Universal Life Separate Account—II ("Private VUL II") (collectively, the "Separate Accounts" and together with NYLIAC, the "Section 26 Applicants"); and MainStay VP Funds Trust (the "Trust" and, together with NYLIAC and the Separate Accounts, the "Section 17 Applicants").

*Summary of Application:* The Section 26 Applicants seek an order pursuant to section 26(c) of the Act approving the substitution of shares of the Replacement Portfolio (defined below) for shares of the Existing Portfolio (defined below), held by the Separate Accounts to support certain variable annuity contracts and variable universal life insurance policies (the "Contracts") issued by NYLIAC (the "Substitution"). The Section 17 Applicants seek an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit

them to engage in certain in-kind transactions ("In-Kind Transactions") in connection with the Substitution.

*Filing Dates:* The application was filed on December 11, 2015, and amended on May 13, 2016, and July 25, 2016. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 22, 2016, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the requester's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants, 51 Madison Avenue, New York, NY 10010.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 551-6879, or David J. Marcinkus, Branch Chief, at (202) 551-6821 (Chief Counsel's Office, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### *Applicants' Representations*

1. NYLIAC is a Delaware stock life insurance company licensed to sell life, accident and health insurance, and annuities in the District of Columbia and all states. NYLIAC is an indirect wholly-owned subsidiary of New York Life Insurance Company, a mutual life insurance company ("New York Life").

2. NYLIAC serves as the depositor of the Separate Accounts, which are segregated asset accounts of NYLIAC established under Delaware law pursuant to resolutions of NYLIAC's Board of Directors to fund the Contracts.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

3. Each Separate Account meets the definition of “separate account” as defined in section 2(a)(37) of the Act. Each Separate Account, except for Private VUL I and Private VUL II, is registered under the Act as a unit investment trust. Private VUL I and Private VUL II are exempt from registration under the Act pursuant to sections 3(c)(1) and 3(c)(7) of the Act.

4. Interests under the Contracts, except for Contracts issued through Private VUL I and Private VUL II, are registered under the Securities Act of 1933, as amended (the “1933 Act”). Contracts issued through Private VUL I and Private VUL II are sold without registration under the 1933 Act in reliance on the private offering exemption of section 4(2) of the 1933 Act and Regulation D thereunder.

5. Each Separate Account is divided into subaccounts (each a “Subaccount,” collectively, the “Subaccounts”). Each Subaccount invests in the securities of a single portfolio of an underlying mutual fund (“Portfolio”). Contract owners and participants in group Contracts (each a “Contract Owner” and collectively, the “Contract Owners”) may allocate some or all of their Contract value to one or more Subaccounts that are available as investment options under the Contracts.

6. Under the Contracts, NYLIAC reserves the right to substitute, for the shares of a Portfolio held in any Subaccount, the shares of another Portfolio. The prospectuses or offering documents, as applicable, for the Contracts include appropriate disclosure of this reservation of right.

7. The Trust is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company under the Act. The Trust currently consists of 31 series (“Series”). Each Series may offer three classes of shares, namely the Initial Class, Service Class and Service 2 Class. For each Series offering Service Class and Service 2 Class shares, the Trust has adopted a Distribution and Service Plan for the Service Class and Service 2 Class shares pursuant to Rule 12b–1 under the Act. The Replacement Portfolio (defined below) is a Series of the Trust.

8. New York Life Investment Management LLC (the “Manager”), an indirect wholly-owned subsidiary of New York Life, serves as the investment manager of each of the Series of the Trust. The Manager is a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

9. The Trust and the Manager may rely on an order from the Commission

that permits the Manager, subject to certain conditions, including approval of the Trust’s board of trustees (“Board”), including a majority of trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act, and without the approval of shareholders, to: (i) Select certain wholly-owned and non-affiliated investment sub-advisers (each, a “Subadvisor” and collectively, the “Subadvisors”) to manage all or a portion of the assets of each Series pursuant to an investment sub-advisory agreement with each Subadvisor; and (ii) materially amend sub-advisory agreements with the Subadvisors.<sup>1</sup>

10. NYLIAC, on behalf of itself and its Separate Accounts, proposes to exercise its contractual right to substitute shares of one Portfolio for that of another by replacing the shares of the Royce Micro-Cap Portfolio (Investment Class) (the “Existing Portfolio”)<sup>2</sup> that are held in Subaccounts of its Separate Accounts with shares of the MainStay VP Small Cap Core Portfolio (Initial Class or Service Class) (the “Replacement Portfolio”).

11. Applicants state that the proposed Substitution is part of an ongoing effort by NYLIAC to make its Contracts more attractive to existing and prospective Contract Owners. The Section 26 Applicants believe the proposed Substitution will help to accomplish these goals for several reasons. The Section 26 Applicants believe, based on its estimates for the current year, the total annual operating expenses for the Replacement Portfolio will be lower than those of the Existing Portfolio, which the Section 26 Applicants believe will appeal to both existing and prospective Contract Owners. In addition, subject to shareholder approval of the manager of managers arrangement, Applicants state that the Proposed Substitution will result in more investment options under the Contracts having the improved portfolio manager selection afforded by the Manager of Managers Order, which the Section 26 Applicants believe will appeal to both existing and prospective Contract Owners. Finally, Applicants state that the proposed Substitution is designed to provide Contract Owners with the ability to continue their investment in a similar investment

option without interruptions and at no additional cost to them. In this regard, NYLIAC or an affiliate will bear all expenses and transaction costs incurred in connection with the proposed Substitution and related filings and notices, including legal, accounting, brokerage, and other fees and expenses.

12. The proposed Substitution will be described in supplements to the applicable prospectuses for the Contracts filed with the Commission or in other supplemental disclosure documents (collectively, “Supplements”) and delivered to all affected Contract Owners at least 30 days before the date the proposed Substitution is effected (the “Effective Date”). The Supplements will give Contract Owners notice of NYLIAC’s intent to substitute shares of the Existing Portfolio as described in the application on the Effective Date. The Supplements also will advise Contract Owners that for at least thirty (30) days before the Effective Date, Contract Owners are permitted to transfer all of or a portion of their Contract value out of any Subaccount investing in the Existing Portfolio (“Existing Portfolio Subaccount”) to any other available Subaccounts offered under their Contracts without the transfer being counted as a transfer for purposes of transfer limitations and fees that would otherwise be applicable under the terms of the Contracts.

13. In addition, each Supplement will (a) instruct Contract Owners how to submit transfer requests in light of the proposed Substitution; (b) advise Contract Owners that any Contract value remaining in the Existing Portfolio Subaccount on the Effective Date will be transferred to the Subaccount investing in the Replacement Portfolio (“Replacement Portfolio Subaccount”), and that the proposed Substitution will take place at relative net asset value; (c) inform Contract Owners that for at least thirty (30) days following the Effective Date, NYLIAC will permit Contract Owners to make transfers of Contract value out of the Replacement Portfolio Subaccount to any other available Subaccounts offered under their Contracts without the transfer being counted as a transfer for purposes of transfer limitations and fees that would otherwise be applicable under the terms of the Contracts; and (d) inform Contract Owners that, except as described in the relevant prospectus, NYLIAC will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers out of the Replacement Portfolio Subaccount for at

<sup>1</sup> See *The MainStay Funds, et al.*, Investment Company Act Rel. Nos. 31597 (May 11, 2015) (notice) and 31663 (Jun. 8, 2015) (order) (“Manager of Managers Order”).

<sup>2</sup> The Existing Portfolio is a series of Royce Capital Fund, a Delaware statutory trust registered with the Commission as an open-end management investment company under the Act and its shares are registered under the 1933 Act.



least thirty (30) days after the Effective Date.

14. NYLIAC will send Contract Owners the prospectus for the Replacement Portfolio in accordance with applicable legal requirements and at least 30 days prior to the Effective Date. The prospectus for the Replacement Portfolio will disclose the existence, substance and effect of the Manager of Managers Order, and will disclose that the Replacement Portfolio may not rely on the Manager of Managers Order without first obtaining shareholder approval. The Replacement Portfolio will not rely on the Manager of Managers Order unless such action is approved by a majority of the Replacement Portfolio's outstanding voting securities, as defined in the Act, at a meeting whose record date is after the proposed Substitution has been effected.

15. In addition to the Supplement distributed to Contract Owners, within five (5) business days after the Effective Date, Contract Owners will be sent a written confirmation of the completed proposed Substitution in accordance with rule 10b-10 under the Securities Exchange Act of 1934, as amended. The confirmation statement will include or be accompanied by a statement that reiterates the free transfer rights disclosed in the Supplement.

16. The proposed Substitution will take place at the Existing and Replacement Portfolios' relative per share net asset values determined on the Effective Date in accordance with section 22 of the Act and rule 22c-1 under the Act. Accordingly, applicants state that the proposed Substitution will have no negative financial impact on any Contract Owner. The proposed Substitution will be effected by having the Existing Portfolio Subaccount redeem its Existing Portfolio shares in cash and/or in-kind on the Effective Date at net asset value per share and purchase shares of the Replacement Portfolio at net asset value per share calculated on the same date.

17. NYLIAC or an affiliate will pay all expenses and transaction costs incurred in connection with the proposed Substitution and related filings and notices, including legal, accounting, brokerage, and other fees and expenses. Applicants state that no costs of the proposed Substitution will be borne directly or indirectly by Contract Owners. Applicants state that Contract Owners will not incur any fees or charges as a result of the proposed Substitution, nor will their rights or the obligations of NYLIAC under the Contracts be altered in any way. Applicants state that the proposed

Substitution will not cause the fees and charges under the Contracts currently being paid by Contract Owners to be greater after the proposed Substitution than before the proposed Substitution.

18. The Section 26 Applicants further agree that the Manager will enter into a written contract with the Replacement Portfolio whereby during the two years following the Effective Date the annual net operating expenses of the Replacement Portfolio will not exceed the annual net operating expenses of the Existing Portfolio for the fiscal year ended December 31, 2015. The Section 26 Applicants further agree that separate account charges for any Contract owner on the Effective Date will not be increased at any time during the two year period following the Effective Date.

#### Legal Analysis:

1. The Section 26 Applicants request that the Commission issue an order pursuant to section 26(c) of the Act approving the proposed Substitution. Section 26(c) of the Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order of the Commission if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the Act.

2. Applicants submit that the proposed Substitution meets the standards set forth in section 26(c) and that, if implemented, the Substitution would not raise any of the concerns underlying that provision. Applicants state that the investment objectives of the Existing Portfolio and the Replacement Portfolio are identical, and the principal investment strategies and principal risks of the Existing Portfolio and the Replacement Portfolio are substantially similar. The Applicants also state that the total annual operating expenses and the aggregate management fees and 12b-1 fees, if any, of each class of the Replacement Portfolio are expected to be lower than the respective total annual operating expenses and management fees of the Existing Portfolio.

3. Applicants also assert that the proposed Substitution is consistent with the principles and purposes of section 26(c) and does not entail any of the abuses that section 26(c) is designed to prevent. Applicants state that the proposed Substitution will not result in the type of costly forced redemptions that section 26(c) was intended to guard against and is consistent with the

protection of investors and the purposes fairly intended by the Act.

4. The Section 17 Applicants request that the Commission issue an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit them to carry out the In-Kind Transactions.

5. Section 17(a)(1) of the Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, acting as principal, from knowingly selling any security or other property to such registered investment company. Section 17(a)(2) of the Act prohibits any of the persons described above, acting as principal, from knowingly purchasing any security or other property from such registered investment company.

6. Section 17(b) of the Act provides that the Commission may, upon application, issue an order exempting any proposed transaction from the provisions of section 17(a) if evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act.

7. The Existing Portfolio and the Replacement Portfolio may be deemed to be affiliated persons of one another, or affiliated persons of an affiliated person. Shares held by a separate account of an insurance company are legally owned by the insurance company. Currently, NYLIAC, through its Separate Accounts, owns more than 25% of the shares of the Existing Portfolio, and therefore may be deemed to be a control person of the Existing Portfolio. In addition, the Manager, as investment adviser to the Replacement Portfolio, may be deemed to be a control person thereof. Because NYLIAC and the Manager are under common control, entities that they control likewise may be deemed to be under common control, and thus affiliated persons of each other, notwithstanding the fact that the Contract Owners may be considered the beneficial owners of those shares held in the Separate Accounts.

8. The Existing Portfolio and the Replacement Portfolio also may be deemed to be affiliated persons of affiliated persons. Regardless of whether NYLIAC can be considered to control the Existing and Replacement Portfolios,

NYLIAC may be deemed to be an affiliated person thereof because it, through its Separate Accounts, owns of record 5% or more of the outstanding shares of such Portfolios. In addition, NYLIAC may be deemed an affiliated person of the Replacement Portfolio because its affiliate, the Manager, may be deemed to control the Replacement Portfolio by virtue of serving as its investment adviser. As a result of these relationships, the Existing Portfolio may be deemed to be an affiliated person of an affiliated person (NYLIAC or the Separate Accounts) of the Replacement Portfolio, and vice versa.

9. The proposed In-Kind

Transactions, therefore, could be seen as the indirect purchase of shares of the Replacement Portfolio with portfolio securities of the Existing Portfolio and conversely the indirect sale of portfolio securities of the Existing Portfolio for shares of the Replacement Portfolio. The proposed In-Kind Transactions also could be categorized as a purchase of shares of the Replacement Portfolio by the Existing Portfolio, acting as principal, and a sale of portfolio securities by the Existing Portfolio, acting as principal, to the Replacement Portfolio. In addition, the proposed In-Kind Transactions could be viewed as a purchase of securities from the Existing Portfolio and a sale of securities to the Replacement Portfolio by NYLIAC (or the Separate Accounts), acting as principal. If characterized in this manner, the proposed In-Kind Transactions may be deemed to contravene Section 17(a) due to the affiliated status of these entities.

10. The Section 17 Applicants submit that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received, are reasonable, fair, and do not involve overreaching because: (1) The proposed In-Kind Transactions will not adversely affect or dilute the interests of Contract Owners; and (2) the proposed In-Kind Transactions will comply with the conditions set forth in rule 17a-7 and the Act, other than the requirement relating to cash consideration. Even though the proposed In-Kind Transactions will not comply with the cash consideration requirement of paragraph (a) of Rule 17a-7, the terms of the proposed In-Kind Transactions will offer to the Existing and Replacement Portfolios the same degree of protection from overreaching that Rule 17a-7 generally provides in connection with the purchase and sale of securities under that Rule in the ordinary course of business. In particular, the Section 17 Applicants cannot effect the proposed In-Kind

Transactions at a price that is disadvantageous to either the Existing Portfolio or the Replacement Portfolio, and the proposed In-Kind Transactions will not occur absent an exemptive order from the Commission.

11. The Section 17 Applicants also submit that the proposed In-Kind Transactions are, or will be, consistent with the policies of the Existing Portfolio and the Replacement Portfolio as stated in their respective registration statements and reports filed with the Commission. Finally, the Section 17 Applicants submit that the proposed In-Kind Transactions are consistent with the general purposes of the Act.

*Applicants' Conditions*

The Section 26 Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The proposed Substitution will not be effected unless NYLIAC determines that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the proposed Substitution can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the proposed Substitution.

2. NYLIAC or its affiliates will pay all expenses and transaction costs of the proposed Substitution, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the Contract Owners to effect the proposed Substitution.

3. The proposed Substitution will be effected at the relative net asset values of the respective shares in conformity with section 22(c) of the Act and rule 22c-1 thereunder without the imposition of any transfer or similar charges by the Section 26 Applicants. The proposed Substitution will be effected without change in the amount or value of any Contracts held by affected Contract Owners.

4. The proposed Substitution will in no way alter the tax treatment of affected Contract Owners in connection with their Contracts, and no tax liability will arise for affected Contract Owners as a result of the proposed Substitution.

5. The rights or obligations of the Section 26 Applicants under the Contracts of affected Contract Owners will not be altered in any way. The proposed Substitution will not adversely affect any riders under the

Contracts since the Replacement Portfolio is an allowable investment option for use with such riders.

6. Affected Contract Owners will be permitted to make at least one transfer of Contract value from the Subaccount investing in the Existing Portfolio (before the Effective Date) or the Replacement Portfolio (after the Effective Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, NYLIAC will not exercise any right it may have under the Contract to impose restrictions on transfers between the Subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date.

7. All affected Contract Owners will be notified, at least 30 days before the Effective Date about: (a) The intended substitution of the Existing Portfolio with the Replacement Portfolio; (b) the intended Effective Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, NYLIAC will deliver to all affected Contract Owners, at least 30 days before the Effective Date, a prospectus for the Replacement Portfolio.

8. NYLIAC will deliver to each affected Contract Owner within five (5) business days of the Effective Date a written confirmation which will include: (a) A confirmation that the Proposed Substitution was carried out as previously notified; (b) a restatement of the information set forth in the Supplements; and (c) before and after account values.

9. The Section 26 Applicants will cause the Manager to enter into a written contract with the Replacement Portfolio, whereby, during the two (2) years following the Effective Date, the annual net operating expenses of the Replacement Portfolio will not exceed the annual net operating expenses of the Existing Portfolio for the fiscal year ended December 31, 2015. The Section 26 Applicants further agree that separate account charges for any Contract owner on the Effective Date will not be increased at any time during the two year period following the Effective Date.

10. The Replacement Portfolio will not rely on the Manager of Managers Order unless such action is approved by a majority of the Replacement Portfolio's outstanding voting securities,

as defined in the Act, at a meeting whose record date is after the Proposed Substitution has been effected.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2016-18060 Filed 7-29-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, August 3, 2016 at 2:00 p.m., in the Auditorium (L-002) at the Commission's headquarters building, to hear oral argument in an appeal from an initial decision of an administrative law judge by respondents Harding Advisory LLC and Wing F. Chau.

On January 12, 2015, the ALJ found that Respondents Harding Advisory LLC, a registered investment adviser, and its principal, Wing F. Chau, violated antifraud provisions of the securities laws. Specifically, the ALJ found that Respondents had misrepresented the standard of care Harding would follow in selecting assets for various Harding-managed CDOs. For these violations, the ALJ ordered Harding and Chau to pay \$1,003,216 in disgorgement and prejudgment interest, revoked Harding's investment adviser registration and ordered it to pay a \$1.7 million civil penalty, and barred Chau from association with the securities industry and ordered him to pay a \$340,000 civil penalty.

Respondent appealed and the Division of Enforcement cross-appealed. The issues likely to be considered at oral argument include, among other things, whether Respondents violated the securities laws and, if so, what sanction, if any, are appropriate in the public interest.

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551-5400.

Dated: July 27, 2016.

**Lynn M. Powalski,**  
Deputy Secretary.

[FR Doc. 2016-18211 Filed 7-28-16; 11:15 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78415; File No. SR-BatsBZX-2016-09]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Pointbreak Agriculture Commodity Strategy Fund of the Pointbreak ETF Trust Under BZX Rule 14.11(i), Managed Fund Shares

July 26, 2016.

#### I. Introduction

On April 15, 2016, Bats BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the Pointbreak Agriculture Commodity Strategy Fund ("Fund") of the Pointbreak ETF Trust ("Trust") under BZX Rule 14.11(i). The proposed rule change was published for comment in the *Federal Register* on May 3, 2016.<sup>3</sup>

On June 15, 2016, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On July 19, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>6</sup>

The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 77723 (April 27, 2016), 81 FR 26600 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 78079, 81 FR 40381 (June 21, 2016). The Commission designated August 1, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> In Amendment No. 1, which replaced the original filing in its entirety, the Exchange: (1) Clarified where price information can be obtained for certain investments of the Fund; (2) provided additional information regarding the creation and redemption process; and (3) made other technical amendments. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-batsbzx-2016-09/batsbzx201609-1.pdf>. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

## II. The Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust. According to the Exchange, the Trust is registered with the Commission as an open-end investment company.<sup>7</sup> Pointbreak Advisers LLC will be the investment adviser ("Adviser")<sup>8</sup> to the Fund.<sup>9</sup> Brown Brothers Harriman & Co. will be the administrator, custodian, and transfer agent for the Trust and ALPS Distributors, Inc. will serve as the distributor for the Trust.<sup>10</sup>

#### A. The Fund's Investments

According to the Exchange, the Fund is an actively managed exchange-traded fund ("ETF") that seeks to provide total return that exceeds that of the Solactive Agriculture Commodity Index ("Benchmark") over time. The Fund is not an index-tracking ETF and is not required to invest in the specific components of the Benchmark. However, the Exchange represents that the Fund will generally seek to maintain

<sup>7</sup> The Exchange states that the Trust has filed a registration statement on behalf of the Fund with the Commission. See Registration Statement on Form N-1A for the Trust, dated March 8, 2016 (File Nos. 333-205324 and 811-23068) ("Registration Statement"). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 ("1940 Act"). See Investment Company Act Release No. 32064 (April 4, 2016) (File No. 812-14577).

<sup>8</sup> The Exchange states that, prior to listing on the Exchange, the Adviser will be registered as a Commodity Pool Operator and will become a member of the National Futures Association ("NFA"). The Exchange also states that the Fund and its Subsidiary (as defined below) will be subject to regulation by the Commodity Futures Trading Commission and NFA, as well as to additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.

<sup>9</sup> The Exchange states that the Adviser is not a registered broker-dealer and is not affiliated with a broker-dealer. In the event that (a) the Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, that adviser or sub-adviser will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

<sup>10</sup> Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of the NAV, distributions, and taxes, among other things, can be found in Amendment No. 1 and the Registration Statement, as applicable. See Amendment No. 1, *supra* note 6; Registration Statement, *supra* note 7.

a portfolio of instruments similar to those included in the Benchmark and will seek exposure to commodities included in the Benchmark.<sup>11</sup>

The Benchmark is a rules-based index composed of futures contracts on 11 heavily traded agriculture commodities including cocoa, coffee, corn, cotton, feeder cattle, hard red winter wheat, lean hogs, live cattle, soybeans, sugar, and soft red winter wheat. The Exchange states that the Benchmark will seek to increase the weightings of those commodities whose futures markets display the most backwardation, or the least contango, among the 11 commodities. In addition, the Exchange represents that the Benchmark will seek to select the contract month for each specific commodity among the next 13 months that display the most backwardation or the least contango, and will not attempt to always own those contracts that are closest to expiration.

Although the Fund, through the Subsidiary (as further described below), will generally invest in Agriculture Commodities Futures (as defined below) that are components of the Benchmark, the Fund and the Subsidiary will be actively managed and will not be required to invest in all of, or limit their investments solely to, the Agriculture Commodities Futures. In this regard, the Fund, through the Subsidiary, may hold the same Agriculture Commodities Futures in approximately, but not exactly, the same weights as the Benchmark. The Fund, through the Subsidiary, will generally hold the Agriculture Commodities Futures with the same maturity as the Benchmark, but may select a different month of maturity in seeking to achieve better performance than the Benchmark.

According to the Exchange, under normal circumstances,<sup>12</sup> the Fund will invest in Agriculture Commodities Futures through the Subsidiary and Cash Instruments (as defined below) both directly through the Fund and through the Subsidiary. "Agriculture Commodities Futures" include only

exchange-traded futures on commodities and exchange-traded futures contracts on commodity indices. "Cash Instruments" include only: (i) Short-term obligations issued by the U.S. Government; (ii) cash and cash-like instruments;<sup>13</sup> (iii) money market mutual funds; and (iv) repurchase agreements.<sup>14</sup> Cash Instruments would provide liquidity, serve as margin, or collateralize the Subsidiary's investments in Agriculture Commodities Futures. The Fund will not invest in Cash Instruments that are below investment-grade.

The Exchange states that the Fund generally will not invest directly in Agriculture Commodities Futures and expects to gain exposure to Agriculture Commodities Futures by investing a portion of its assets in the Subsidiary.<sup>15</sup> The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to commodity markets in accordance with applicable rules and regulations. The Subsidiary has the same investment objective and investment restrictions as the Fund. The

<sup>13</sup> Cash-like instruments include only the following: Short-term negotiable obligations of commercial banks, fixed-time deposits, bankers acceptances of U.S. banks and similar institutions, and commercial paper rated at the date of purchase "Prime-1" by Moody's Investors Service, Inc. or "A-1+" or "A-1" by Standard & Poor's or, if unrated, of comparable quality, as the Adviser determines.

<sup>14</sup> According to the Exchange, the Fund follows certain procedures designed to minimize the risks inherent in repurchase agreements. These procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Adviser. The Exchange represents that it is the current policy of the Fund not to invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, amount to more than 15% of the Fund's net assets. The Exchange states that the investments of the Fund in repurchase agreements, at times, may be substantial when, in the view of the Adviser, liquidity or other considerations so warrant.

<sup>15</sup> The Exchange states that the Subsidiary is not registered under the 1940 Act and is not directly subject to its investor protections, except as noted in the Registration Statement. However, according to the Exchange, the Subsidiary is wholly-owned and controlled by the Fund and is advised by the Adviser. Therefore, the Exchange asserts, because of the Fund's ownership and control of the Subsidiary, the Subsidiary would not take action contrary to the interests of the Fund or its shareholders. The Fund's Board of Trustees has oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Adviser receives no additional compensation for managing the assets of the Subsidiary. The Exchange states that the Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

Fund will generally invest up to 25% of its total assets in the Subsidiary.

The Exchange represents that, during times of adverse market, economic, political, or other conditions, the Fund may depart temporarily from its principal investment strategies (such as by maintaining a significant uninvested cash position) for defensive purposes. The Exchange states that doing so could help the Fund avoid losses, but may mean lost investment opportunities, and that during these periods, the Fund may not achieve its investment objective.

The Fund intends to qualify each year as a regulated investment company under the Internal Revenue Code.

### *B. The Fund's Investment Restrictions*

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser<sup>16</sup> under the 1940 Act. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Aside from the Fund's investments in the Subsidiary, neither the Fund nor the Subsidiary will invest in non-U.S. equity securities. Neither the Fund nor the Subsidiary will invest in derivatives other than Agriculture Commodities Futures.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns.

### **III. Discussion and Commission Findings**

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and

<sup>16</sup> The Exchange states that, in reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>11</sup> The Fund will generally obtain its exposure to commodity markets via investments in a wholly owned subsidiary organized under the laws of the Cayman Islands ("Subsidiary"). References to the investments of the Fund include investments of the Subsidiary to which the Fund gains indirect exposure.

<sup>12</sup> According to the Exchange, the term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

regulations thereunder applicable to a national securities exchange.<sup>17</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act,<sup>18</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>19</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

According to the Exchange, quotation and last sale information for the Shares will be available on the facilities of the Consolidated Tape Association ("CTA"), and the previous day's closing price and trading volume information for the Shares will be generally available daily in the print and online financial press. Also, daily trading volume information for the Fund will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. Additionally, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

In addition, the Intraday Indicative Value<sup>20</sup> (as defined in BZX Rule

14.11(i)(3)(C)) will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.<sup>21</sup> On each business day, before commencement of trading in the Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio (as defined in BZX Rule 14.11(i)(3)(B))<sup>22</sup> that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>23</sup> The Web site for the Fund will also include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

Intraday price quotations on Cash Instruments of the type held by the Fund, with the exception of money market mutual funds, are available from major broker-dealer firms and from third

settles prior to the end of the Exchange's Regular Trading Hours. The Exchange's Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

<sup>21</sup> The Exchange notes that several major market data vendors display or make widely available Intraday Indicative Values published via the CTA or other data feeds.

<sup>22</sup> The Disclosed Portfolio will include for each portfolio holding of the Fund and the Subsidiary, as applicable: Ticker symbol or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective date, market value, and percentage weight of the holding in the portfolio. The Web site and information will be publicly available at no charge.

<sup>23</sup> The NAV of the Fund will generally be determined at 4:00 p.m. Eastern Time each business day when the Exchange is open for trading. The Fund intends to require all creation and redemption requests to be received no later than 10:30 a.m. Eastern Time ("cutoff time") in order to create or redeem Shares based on that day's NAV. In support of this early cutoff time, the Exchange represents that the early cutoff time will provide the Fund with certainty as to whether to buy or sell certain Agriculture Commodity Futures in advance of their settlement times, which should help to minimize the difference between the price used to calculate the NAV and the price at which the Fund is able to buy or sell the Agriculture Commodity Futures. The Exchange also represents that the early cutoff time will provide authorized participants and market makers with certainty regarding the prices that will be used for calculating the NAV and that they will be able to transact at those prices, which should assist authorized participants and market makers to efficiently hedge their positions. Moreover, the Exchange represents that the early cutoff time should not significantly interfere with the arbitrage mechanism because authorized participants and market makers will continue to be able to hedge their positions in the Fund by investing directly in Agriculture Commodity Futures as trading in these Agriculture Commodity Futures continues after the settlement time. Finally, the Exchange represents that although the authorized participants and market makers that accumulate positions after the cutoff time may take on risk or additional costs to the extent they have to hold part or all of their positions overnight, the risk or additional costs do not generally interfere with the arbitrage mechanism. See Amendment No. 1, *supra* note 6.

parties, which may provide prices free with a time delay or "live" with a paid fee. For Agriculture Commodities Futures, intraday pricing information is available directly from the applicable listing exchange. Price information for money market mutual funds will be available from the applicable investment company's Web site.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Further, trading in the Shares will be subject to BZX Rules 11.18 and 14.11(i)(4)(B)(iv), which set forth circumstances under which trading in Shares of the Fund may be halted. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the Agriculture Commodities Futures and other assets composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>24</sup> The Exchange represents that it prohibits the distribution of material, non-public information by its employees. The Exchange states that the Adviser is not a registered broker-dealer and is not affiliated with a broker-dealer, and that, in the event that (a) the Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, that adviser or sub-adviser will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of

<sup>17</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>20</sup> According to the Exchange, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio (as defined below). The Exchange states that quotations of certain of the Fund's holdings may not be updated for purposes of calculating Intraday Indicative Value during U.S. trading hours where the market on which the underlying asset is traded

<sup>24</sup> See BZX Rule 14.11(i)(4)(B)(ii)(b).

material non-public information regarding the portfolio.<sup>25</sup>

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares, and that these surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Shares will be subject to BZX Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange may obtain information regarding trading in the Shares and the underlying futures, including futures contracts held by the Subsidiary, via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliate members of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine.

(4) All of the futures contracts in the Disclosed Portfolio for the Fund (including those held by the Subsidiary) will trade on markets that are a member or affiliate member of ISG or on markets with which the Exchange has in place a comprehensive surveillance sharing agreement.

(5) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The

procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions (as defined in the Exchange's rules), when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Exchange Act.<sup>26</sup>

(7) Aside from the Fund's investments in the Subsidiary, neither the Fund nor the Subsidiary will invest in non-U.S. equity securities.

(8) Neither the Fund nor the Subsidiary will invest in derivatives other than Agriculture Commodities Futures.

(9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser under the 1940 Act. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

(10) The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns.

(11) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange. In

addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and that, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12.

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 1. The Commission notes that the Fund and the Shares must comply with the requirements of BZX Rule 14.11(i) to be initially and continuously listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act<sup>27</sup> and Section 11A(a)(1)(C)(iii) of the Exchange Act<sup>28</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>29</sup> that the proposed rule change (SR-BatsBZX-2016-09), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2016-18053 Filed 7-29-16; 8:45 am]

BILLING CODE 8011-01-P

#### DEPARTMENT OF STATE

[Public Notice: 9656]

#### U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Conciliated Settlement Agreements

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss ongoing work in the United Nations Commission on International Trade Law (UNCITRAL) on the topic of the enforcement of

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 17 CFR 200.30-3(a)(12).

<sup>25</sup> The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

<sup>26</sup> See 17 CFR 240.10A-3.

conciliated settlement agreements. The public meeting will take place on Wednesday, August 24, 2016 from 10:00 a.m. until 1:00 p.m. EDT. This is not a meeting of the full Advisory Committee.

In 2014, the United States proposed that UNCITRAL develop a convention on the enforcement of conciliated settlement agreements that resolve international commercial disputes. See A/CN.9/822, available at <http://www.uncitral.org/uncitral/commission/sessions/47th.html>. In 2015, UNCITRAL decided that its Working Group II should begin work on the topic. The Working Group discussed the topic at its September 2015 and February 2016 sessions, and will do so again at its September 2016 session. Documents for Working Group II are available at [http://www.uncitral.org/uncitral/en/commission/working\\_groups/2Arbitration.html](http://www.uncitral.org/uncitral/en/commission/working_groups/2Arbitration.html).

The purpose of the public meeting is to obtain the views of concerned stakeholders on the instrument being developed by UNCITRAL. Those who cannot attend but wish to comment are welcome to do so by email to Tim Schnabel at [SchnabelTR@state.gov](mailto:SchnabelTR@state.gov).

**Time and Place:** The meeting will take place from 10:00 a.m. until 1:00 p.m. at 2430 E Street NW (South Building, SA-4A), Room 240, Washington, DC. Participants should arrive at the Navy Hill/Potomac Annex gate at 23rd and D Streets NW before 9:40 a.m. for visitor screening, and will be escorted to the South Building. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

**Public Participation:** This meeting is open to the public, subject to the capacity of the meeting room. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should email [pil@state.gov](mailto:pil@state.gov) providing full name, address, date of birth, citizenship, driver's license or passport number, and email address. This information will greatly facilitate entry into the building. A member of the public needing reasonable accommodation should email [pil@state.gov](mailto:pil@state.gov) not later than August 17, 2016. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please email [pil@state.gov](mailto:pil@state.gov) to obtain the call-in number and other information. We ask that each person who intends to participate by telephone notify us directly so that we may ensure that we have adequate dial-in capacity.

Data from the public is requested pursuant to Public Law 99-399 (Omnibus Diplomatic Security and

Antiterrorism Act of 1986), as amended; Public Law 107-56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS-D) database. Please see the Security Records System of Records Notice (State-36) at <https://foia.state.gov/docs/SORN/State-36.pdf> for additional information.

Dated: July 20, 2016.

**Timothy R. Schnabel,**

Attorney-Adviser, Office of Private International Law, Office of Legal Adviser, Department of State.

[FR Doc. 2016-18125 Filed 7-29-16; 8:45 am]

BILLING CODE 4710-08-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0180]

#### Commercial Driver's License (CDL) Testing; Application for Exemption: State of Minnesota

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the State of Minnesota has applied for an exemption from regulations governing commercial driver's license (CDL) skills testing procedures and practices. Minnesota believes it can deliver CDL skills testing more efficiently in an alternative manner. It asserts that its method of delivering skills testing will maintain the testing standards enumerated by the regulations. FMCSA requests public comments on the request for exemption.

**DATES:** Comments must be received on or before August 31, 2016.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2016-0180 by any of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.
- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE.,

between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

**Instructions:** All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. Please see the *Privacy Act* heading below.

**Docket:** For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time and in the box labeled "SEARCH for" enter FMCSA-2016-0180 and click on the tab labeled "SEARCH."

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**Public Participation:** The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Thomas L. Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325; Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR part 350 *et seq.*). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been



conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### Background

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) was designed to improve highway safety by ensuring that truck and bus drivers are qualified to drive a commercial motor vehicle (CMV). It provided for removal of the driving privileges of unsafe or unqualified drivers. States issue commercial driver's licenses (CDLs) to CMV operators, but the CMVSA directed the Federal government to establish minimum requirements for the issuance of a CDL.

Subpart H of 49 CFR part 383 contains the principal requirements governing State testing of applicants for a CDL. Testing must be conducted in such a way as to determine if the applicant possesses the required knowledge and skills (§ 383.133(a)).

### Request for Exemption

Minnesota seeks a partial exemption from § 383.133, "Test Methods." Pursuant to that section, the CDL skills test must be conducted in three parts in the following order: pre-trip inspection, vehicle control skills, and on-road driving (§ 383.133(c)(6)). Minnesota asks that it be allowed to combine the second and third parts (vehicle control skills and on-road driving) and thus reduce the skills test to two parts. It also asks to be exempted from using the American Association of Motor Vehicle Administrators (AAMVA) 2005 Test Model Score Sheet. Finally, it asks to be exempted from the requirement that applicants must pass the pre-trip inspection portion of the exam before proceeding to the balance of the test.

Minnesota states that under its proposed approach, it can more efficiently manage the limited space of

its test sites and conduct more CDL tests each day. It states that denial of its application for exemption will result in a less-rigorous CDL test and negatively affect motor carriers and drivers. A copy of Minnesota's application for exemption is in the docket listed at the beginning of this notice.

### Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Minnesota's application for exemption. The Agency will consider all comments received by close of business on August 31, 2016.

Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice.

Issued on: July 22, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016-18131 Filed 7-29-16; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. **FMCSA-2013-0121; FMCSA-2013-0123; FMCSA-2013-0124; FMCSA-2013-0125; FMCSA-2014-0102; FMCSA-2014-0104**]

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions for 20 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to operate CMVs in interstate commerce.

**DATES:** This decision was effective March 4, 2016. Comments must be received on or before August 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Christine A. Hydock, Chief, Medical Programs Division, Medical Programs Division, 202-366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

## SUPPLEMENTARY INFORMATION:

### I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

### II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for up to 2 years if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to driver a CMV if that person:

First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951.

49 CFR 391.41(b)(11) was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The 20 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in 49 CFR 391.41(b)(11), in accordance with FMCSA procedures.

### III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the

statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver. FMCSA encourages you to participate by submitting comments and related materials.

#### IV. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 20 applicants has satisfied the entry conditions for obtaining an exemption from the hearing requirement (80 FR 18924; 80 FR 18926; 80 FR 22766; 80 FR 22768; 80 FR 60747). The Commercial Driver's License Information System (CDLIS) and Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce.

#### V. Exemption Decision

The 20 drivers in this notice remain in good standing with the Agency and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. FMCSA has concluded that renewing the exemptions for each of these applicants is likely to achieve a level of safety equal to that existing without the exemption. Therefore, FMCSA has decided to renew each exemption for a two-year period. They are:

Joshua Arango (FL), Michael Beebe (NJ), Andrew Deuschle (TX), David Garland (ME), Daniel Grossinger (MD), Roman Landa (CA), Claire Mitcham (TX), Quinton Murphy (WI), Michael Paasch (NE), Jeffrey Pagenkopf (MN), Kelly Pulvermacher (WI), Alfredo Ramirez (TX), Fernando Ramirez-Savon (NM), Julie Ramirez (TX), Ralph Reno (PA), Adalberto Rodriguez (NY), Andrey Shevchenko (MN), William Symonds (IL), Hayden Teesdale (TX), Joshua Weaver (GA).

#### VI. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each

driver must report any crashes or accidents as defined in 49 CFR 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391 to FMCSA. In addition, the driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement officials. The driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

#### VII. Conclusion

Based upon its evaluation of the 20 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in 49 CFR 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Issued on: July 22, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016-18137 Filed 7-29-16; 8:45 am]

BILLING CODE 4910-EX-P

### DEPARTMENT OF TRANSPORTATION

#### Federal Motor Carrier Safety Administration

[Docket No. FMCSA- 2016-0002]

#### Qualification of Drivers; Application for Exemptions; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 33 individuals for an exemption from the hearing requirement to operate commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before August 31, 2016.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2016-0002 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- **Fax:** 1-202-493-2251.

**Instructions:** Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-113, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****I. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 33 individuals listed in this notice have recently requested such an exemption from the hearing requirement in 49 CFR 391.41(b) (11), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person

First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

**II. Qualifications of Applicants***Priscilla Brakenridge*

Ms. Brakenredge, age 40, holds an operator's license in Illinois.

*David Balay Chappellear*

Mr. Chappellear, age 26, holds an operator's license in Texas.

*Donald Coen*

Mr. Coen, age 52, holds a class A CDL in New York.

*Mathias Conway*

Mr. Mathias, age 56, holds on operator's license in Michigan.

*Gary A. Cordano*

Mr. Cordano, age 44, holds a class A CDL in California.

*Harvey Culver*

Mr. Culver, age 32, holds a class A CDL in Texas.

*Charles DePriest*

Mr. DePriest, age 55, holds an operator's license in Texas.

*William R. English*

Mr. English, age 42, holds an operator's license in Texas.

*Samuel Fernell*

Mr. Fernell, age 47, holds an operator's license in Ohio.

*Richard Fisher*

Mr. Fisher, age 28, holds an operator's license in Pennsylvania.

*Russell Fleming*

Mr. Fleming, age 54, holds an operator's license in Georgia.

*Ronald Freeze*

Mr. Freeze, age 64, holds a class A CDL in Oklahoma.

*Carlos Gonzales*

Mr. Gonzales, age 53, holds an operator's license in Georgia.

*Zachary Gullett*

Mr. Gullett, age 22, holds an operator's license in Ohio.

*Richard Hoots*

Mr. Hoots, age 31, holds an operator's license in Arizona.

*Carlos Lee Jackson*

Mr. Jackson, age 53, holds a class A CDL in Texas.

*Richard Kahalewai-Campbell*

Mr. Kahalewai, age 34, holds an operator's license in Hawaii.

*Randall Lutsey*

Mr. Lutsey, age 52, holds a class A CDL in Pennsylvania.

*Reynaldo Martinez*

Mr. Martinez, age 35, holds an operator's license in Texas.

*Julio C. Medrano*

Mr. Medrano, age 41, holds an operator's license in Washington.

*Keith Miller*

Mr. Miller, age 37, holds a class B CDL in Missouri.

*Brian J. Minch*

Mr. Minch, age 31, holds an operator's license in Massachusetts.

*Katrina Parker*

Ms. Parker, age 31 holds an operator's license in New Jersey.

*Walt Pindor*

Mr. Pindor, age 55, holds a class A CDL in Arizona.

*Robert Samarian*

Mr. Samarian, age 39, holds an operator's license in Michigan.

*D'Nielle Smith*

Ms. Smith, age 32, holds an operator's license in Ohio.

*Michael Smith*

Mr. Smith, age 50, holds a class A CDL in Colorado.

*Daniel Stroud*

Mr. Stroud, age 50, holds an operator's license in Utah.

*Michael Sweet*

Mr. Sweet, age 45, holds a class B CDL in Georgia.

*James Watters*

Mr. Watters, age 55, holds an operator's license in Ohio.

*Gerald Westfall*

Mr. Westfall, age 67, holds a class A CDL in Pennsylvania.

*Derek Zamot*

Mr. Zamot, age 43, holds an operator's license in Florida.

**III. Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

**IV. Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2016-0002 and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for

copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination any time after the close of the comment period.

#### V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA–2016–0002 and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to this notice.

Issued on: July 22, 2016.

Larry W. Minor,

*Associate Administrator for Policy.*

[FR Doc. 2016–18132 Filed 7–29–16; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0032]

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of denials.

**SUMMARY:** FMCSA announces its denial of 160 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

#### FOR FURTHER INFORMATION CONTACT:

Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

#### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds “such an exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such an exemption.” The procedures for requesting an exemption are set forth in 49 CFR part 381.

Accordingly, FMCSA evaluated 160 individual exemption requests on their merit and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on the exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published in this notice summarizes the Agency’s recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 2 applicants did not have sufficient driving experience over the past 3 years under normal highway operating conditions:

Gregory M. Anderson  
David Holguin

The following 52 applicants had no experience operating a CMV:

Dakota G. Abbott  
Mohamed A. Barre  
William J. Baughman  
Drew R. Benton  
Michael W. Brown  
Ronald G. Burr  
Luis A. Cortez  
Michael A. DiBiase  
Ronnie D. Dingal  
Anthony D. Everett  
Paul D. Ewey  
Abraham Filmalter  
Danny S. Flemister  
Selese A. Fort  
Buddy L. Gibson  
Trevor Hall  
Richard M. Haugen  
Jason S. Hooker  
William D. Hulsey II  
Daniel M. Jackson  
Samuel L. Kirkpatrick  
Brian J. LaBarge  
Justin T. Lewis  
Samantha J. Linberg  
Cedrick A. Martin  
Aqif Matraku  
Aaron A. McBride  
Zachary J. Menchaca  
Richard W. Merritt  
Michael J. Miller  
David R. Mitchell

Huon Morris  
Lane T. Morton  
Rose M. Neely  
Douglas Patton  
Tina M. Petkovsek  
Brian J. Poe  
Derek D. Pratt  
Michael S. Pressley  
Lawrence K. Proctor  
Alexander Pulido  
Josue M. Rodriguez-Espinoza  
Michael C. Shelp  
Jerek Smith  
Rashania M. Smith  
James E. Soderquist  
Kody L. Sullivan  
Seifu A. Tilahun  
Jovan C. Vega  
Patricia A. Williams  
Kimberly S. Wilson  
Owen W. Witmer

The following 27 applicants did not have 3 years of experience driving a CMV on public highways with their vision deficiencies:

Guy L. Banks  
Gary W. Brockway  
Carlos D. M. Catillo  
Tsz Fung Chiu  
Eugene J. Corson  
Terry D. Eberly  
Juan J. Giron  
Timothy F. Giza  
Crescencio Gonzalez  
Tasuli Gramosli  
James W. Gray  
Gregory L. Grover  
Bobby M. James  
Robert F. LaMark  
Kevin A. Milam  
Bryan S. Moses  
Manuel Narvaez, Jr.  
Kenneth Newswanger  
Aaron B. Reke  
Kenneth W. Seifert  
Charles S. Shaffblower, Jr.  
Michael Sierra  
Roderick R. Sonnier  
Ramon E. Tijerino  
Alan L. Viessman  
James D. Watters  
Kenneth E. Wheland

The following 14 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency:

Paul C. Alves  
Christopher L. Ambers  
John W. Black III  
Benny W. Bledsoe  
Michael C. Boyne  
Philip L. Bradford  
Jesus Cerros Palos  
Richard B. Davis  
Zack Fowler  
James E. Frederick III  
Daniel G. Y. Haile  
Dustin M. Mills

Juan A. Ortiz  
Gary W. Stevenson

The following 13 applicants did not have sufficient driving experience during the past 3 years under normal highway operating conditions:

Caleb E. Boulware  
Timothy D. Ferrell  
Travis A. Francis  
Nicholas D. Hansen  
Gabriel L. Harrison  
Jeffrey A. Jensrud  
Ruslan Kochiyev  
Edwin Martinez  
William Perez  
Daniel C. Sagert  
Roger T. Simmons  
Joseph L. Smith  
Michael K. Soost

The following 2 applicants were charged with moving violations in conjunction with a CMV accident:

Theodore N. Belcher  
Perry T. Kolberg

The following applicant, Bruce A. Rost, has other medical conditions that make him or her otherwise unqualified.

The following applicant, Jeremy M. Row, did not have an optometrist or ophthalmologist willing to make a statement that they are able to operate a commercial vehicle from a vision standpoint.

The following 9 applicants were denied for multiple reasons:

Kyle D. Baer  
Montie H. Cudd  
Walter Gomez  
Michael J. Howe  
Kelly D. Kitchmaster  
Stephen J. Pariseau  
Henry Riser  
Aaron G. Stoltzfoos  
Willie Taylor III

The following applicant, Rufus L. Jones, submitted false documentation during the application process.

The following applicant, Stuart J. Daniell, did not have stable vision for the entire 3-year period.

The following applicant, Robert J. Duncan, is a Canadian citizen.

The following 7 applicants met the current federal vision standards. Exemptions are not required for applicants who meet the current regulations for vision:

Dustin C. Barber  
Dennis L. Bramlett  
Madeline C. Duran  
Valerian K. Legah  
Larry M. Owen  
James M. Trezza  
Roger K. Wells

The following 2 applicants were charged with moving violations in conjunction with a CMV accident:

William E. Brown  
William Serrano

The following 19 applicants will not be driving interstate, interstate commerce, or are not required to carry a DOT medical card:

Samuel B. Batten  
Enrico Farro  
Mike Fender  
Douglas J. Frey  
Joseph G. Gilmore  
Dennis P. Keenan  
Kenneth A. Lamb  
Harlan R. Larson  
Steven P. Orrell  
Guadalupe Reyes  
Robert L. Rice  
Steven Rigitano  
Ryan E. Rutter  
Mario R. Scirica  
Lloyd E. Shryock  
Antonio Soto  
John P. Steffens  
John R. Wolfe  
Roger D. Woodcock

Finally, the following 8 applicants perform transportation for the federal government, state, or any political subdivision of the state.

David M. Field  
Jason M. Isaman  
Anthony Woodruff  
Dexter O'Neil  
Samuel B. Martinez  
Kenneth P. Smith  
Daniel L. Homan, Dennis M. Varga

Issued on: July 25, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016-18138 Filed 7-29-16; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration (FTA)

#### Fiscal Year 2015 Low or No Emission Vehicle Deployment (LoNo) Program

**AGENCY:** Federal Transit Administration (FTA), DOT. Funding Opportunity Number: FTA-2015-006-TRI Catalog of Federal Domestic Assistance (CFDA) Number: 20.514

**ACTION:** Announcement of project selections.

#### SUMMARY:

##### Low or No Emission Vehicle Deployment Program

The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announced the selection of Fiscal Year (FY) 2015 Low or No Emissions Vehicle Deployment Program (LoNo) projects on April 19,

2016, (see Table 1). The Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, July 6, 2012, amended 49 U.S.C. 5312 to add a new paragraph (d)(5) authorizing FTA to make grants to finance eligible projects under the LoNo Program. The Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235, December 16, 2014, made available \$22,500,000 in FY 2015 funds to carry out the LoNo Program. Of that amount, a maximum of \$19,500,000 was available for transit buses and a minimum of \$3,000,000 was available for supporting facilities and related equipment.

On September 24, 2015, FTA published a Notice of Funding Availability (NOFA) (80 FR 57656) announcing the availability of funding for the LoNo Program. The purpose of the LoNo Program is to deploy the cleanest and most energy efficient U.S.-made transit buses that have been largely proven in testing and demonstrations but are not yet widely deployed in transit agency fleets. The LoNo Program provides funding for transit agencies for capital acquisitions and leases of zero-emission and low-emission transit buses, including acquisition, construction, and leasing of required supporting facilities such as recharging, refueling, and maintenance facilities.

**FOR FURTHER INFORMATION CONTACT:** The appropriate FTA Regional Office will contact successful applicants regarding the next steps in applying for funds (see Table 1). Unsuccessful LoNo Program applicants may contact Sean Ricketson, Office of Research Demonstration, and Innovation at email address [sean.ricketson@dot.gov](mailto:sean.ricketson@dot.gov) to arrange a proposal debriefing within 30 days of this announcement.

**SUPPLEMENTARY INFORMATION:** In response to the LoNo NOFA, FTA received 63 project proposals requesting \$247,631,499 in Federal funds. Project proposals were evaluated based on each applicant's responsiveness to the program evaluation criteria published in the NOFA. FTA is funding seven LoNo Program projects, as shown in Table 1, for a total of \$22,500,000. Grantees selected for the LoNo Program should work with their FTA Regional Office to complete the grant applications.

Grant applications must only include eligible activities applied for in the original project application. Project partner organizations identified as team members or sub-recipients in the original project application must be identified and included in the grant application in the capacity as originally

proposed. Funds must be used consistent with the competitive proposal and for the eligible purposes established in the NOFA and described in the FTA *Circular 6100.1E* and/or FTA *Circular 9030.1E*. In cases where the allocation amount is less than the proposer's requested amount, grantees should work with the FTA Regional Office in coordination with the Office of Research, Demonstration, and Innovation to reduce scope or scale the project such that a complete phase or project is accomplished. Grantees are reminded that program requirements such as cost sharing or local match can

be found in the NOFA. A discretionary research project identification number will be assigned to each project for tracking purposes and must be used in the Transit Award Management System (TrAMS) application.

All projects are granted pre-award authority with an effective date of April 19, 2016, so long as all required conditions for pre-award authority have been met and the activities undertaken in advance of federal funding are contained in the approved project plan or statement of work. Post-award reporting requirements include submission of the Federal Financial Report and Milestone reports in TrAMS

as appropriate (FTA *Circular 6100.1E*, *Circular 5010.1D* and *Circular 9030.1E*). The grantees must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements detailed in the most recent Master Agreement in carrying out the project supported by the FTA research grant. The FY16 Master Agreement can be found at the following Internet address: <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/sample-fta-agreements-october-1-2015>.

**Carolyn Flowers,**  
Acting Administrator.

TABLE 1—LOW OR NO EMISSION VEHICLE DEPLOYMENT PROGRAM PROJECT SELECTIONS

Discretionary ID	State	Project sponsor	Project	Amount
D2016-LONO-001 ...	CA	LACMTA under Southern California Association of Governments (SCAG).	Deploy 5 battery-electric buses .....	\$4,275,000
D2016-LONO-002 ...	CA	Foothill Transit under Southern California Association of Governments (SCAG).	Deploy charging infrastructure for an existing fleet of battery-electric buses.	1,310,000
D2016-LONO-003 ...	CA	AC Transit Under the Metropolitan Transportation Commission.	Deploy 5 battery-electric buses .....	1,551,611
D2016-LONO-004 ...	OH	Stark Area Regional Transit Authority .....	Deploy 3 additional buses to SARTA's fleet of fuel cell electric buses.	4,015,174
D2016-LONO-005 ...	PA	Southeastern Pennsylvania Transportation Authority (SEPTA).	Deploy 25 battery-electric buses .....	2,585,075
D2016-LONO-006 ...	UT	Utah Transit Authority (UTA) .....	Deploy 5 battery-electric buses .....	5,427,100
D2016-LONO-007 ...	WA	King County .....	Deploy 8 additional buses to King County's fleet of battery-electric buses.	3,336,040
Total .....		.....	.....	22,500,000

[FR Doc. 2016-18045 Filed 7-29-16; 8:45 am]

BILLING CODE 4910-57-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2016 0075]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SERENITE; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before August 31, 2016.

**ADDRESSES:** Comments should refer to docket number MARAD-2016-0075. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel SERENITE is:

*Intended Commercial Use of Vessel:* "passenger hotel barge providing overnight tours of the US inland waterways."

*Geographic Region:* "New York, Vermont, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida"

The complete application is given in DOT docket MARAD-2016-0075 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver

criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

#### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

By Order of the Maritime Administrator.

Dated: July 19, 2016.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2016-18105 Filed 7-29-16; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2016-0076]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MERLOT; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before August 31, 2016.

**ADDRESSES:** Comments should refer to docket number MARAD-2016-0076. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents

entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

#### SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel MERLOT is:

*Intended Commercial Use of Vessel:* "Yacht Charter Services and Multihull Sailing Instruction".

*Geographic Region:* "CALIFORNIA".

The complete application is given in DOT docket MARAD-2016-0076 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

#### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

By Order of the Maritime Administrator.

Dated: July 26, 2016.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2016-18104 Filed 7-29-16; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting; correction.

**SUMMARY:** In the **Federal Register** notice that was originally published on July 8, 2016, (81 FR 44686) the meeting date was August 18, 2016 at 2:00 p.m. Eastern Time. The new meeting date is Thursday, August 25, 2016 at 2:00 p.m.

**DATES:** The meeting will be held Thursday, August 25, 2016.

#### FOR FURTHER INFORMATION CONTACT:

Antoinette Ross at 1-888-912-1227 or (202) 317-4110.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, August 25, 2016, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Antoinette Ross. For more information please contact: Antoinette Ross at 1-888-912-1227 or (202) 317-4110, or write TAP Office, 1111 Constitution Avenue NW., Room 1509-National Office, Washington, DC 20224, or contact us at the Web site: <http://www.improveirs.org>.

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: July 26, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016-18118 Filed 7-29-16; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Multiemployer Pension Plan Application To Reduce Benefits.

**AGENCY:** Department of the Treasury.

**ACTION:** Notice of availability; Request for comments.

**SUMMARY:** The Board of Trustees of the Bricklayers & Allied Craftsmen Local No. 7 Pension Plan (Bricklayers Local 7



Pension Plan), a multiemployer pension plan, has submitted an application to Treasury to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Bricklayers Local 7 Pension Plan has been published on the Web site of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including contributing employers, employee organizations, and participants and beneficiaries of the Bricklayers Local 7 Pension Plan.

**DATE:** Comments must be received by September 15, 2016.

**ADDRESSES:** You may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>, in accordance with the instructions on that site. Electronic submissions through [www.regulations.gov](http://www.regulations.gov) are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

**Additional Instructions.** All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on [www.regulations.gov](http://www.regulations.gov) or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the application from the Board of Trustees of the Bricklayers Local 7 Pension Plan, please contact Treasury at (202) 622-1534 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Multiemployer Pension Reform Act of 2014 (MPRA) amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the

Treasury, which Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor, is required to approve or deny.

On June 28, 2016, the Board of Trustees of the Bricklayers Local 7 Pension Plan submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's Web site at <https://auth.treasury.gov/services/Pages/Plan-Applications.aspx>. Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Bricklayers Local 7 Pension Plan application.

Comments are requested from interested parties, including contributing employers, employee organizations, and participants and beneficiaries of the Bricklayers Local 7 Pension Plan. Consideration will be given to any comments that are timely received by Treasury.

Dated: July 22, 2016.

**David R. Pearl,**

*Executive Secretary, Department of the Treasury.*

[FR Doc. 2016-18175 Filed 7-28-16; 4:15 pm]

**BILLING CODE 4810-25-P**

## DEPARTMENT OF THE TREASURY

### Proposed Collection; Comment Request

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before September 30, 2016 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Department of the Treasury, Office of the Fiscal Assistant Secretary, ATTN: Sustanchia Gladden, 1500 Pennsylvania Avenue NW., Room 1050, Washington, DC 20020 or to [Sustanchia.Gladden@treasury.gov](mailto:Sustanchia.Gladden@treasury.gov).

### FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to the Department of the Treasury, Office of the Fiscal Assistant Secretary, ATTN: Sustanchia Gladden, 1500 Pennsylvania Avenue NW., Room 1050, Washington, DC 20020 or to [Sustanchia.Gladden@treasury.gov](mailto:Sustanchia.Gladden@treasury.gov).

### SUPPLEMENTARY INFORMATION:

**OMB Control Number:** 1505-0221.

**Title:** Annual Performance Report and Certification for Section 1603: Payments for Specified Renewable Energy Property in Lieu of Tax Credits.

**Abstract:** The purpose of the 1603 payment is to reimburse eligible applicants for a portion of the cost of installing specified energy property used in a trade or business or for the production of income. A 1603 payment is made after the energy property is placed in service. Applicants for Section 1603 payments commit in the terms and conditions that are part of the Treasury program application to submitting an annual report for five years from the date the energy property is placed in service.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** State, local, or tribal governments.

**Estimated Number of Respondents:** 150,000.

**Estimated Hours per Response:** 0.25.

**Estimated Total Annual Burden Hours:** 37,500.

**Request for Comments:** Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. Comments may become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 26, 2016.

**Brenda Simms,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2016-18049 Filed 7-29-16; 8:45 am]

**BILLING CODE 4810-25-P**

**DEPARTMENT OF THE TREASURY****Submission for OMB Review;  
Comment Request**

July 26, 2016.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before August 31, 2016 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission may be obtained by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622–1295, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

**Bureau of the Fiscal Service**

*OMB Control Number:* 1530–0053.  
*Type of Review:* Revision of a currently approved collection.  
*Title:* PD F 2001, Release.  
*Form:* FS Form 2001.  
*Affected Public:* Individuals or households.  
*Estimated Total Annual Burden Hours:* 3.

**Brenda Simms,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2016–18047 Filed 7–29–16; 8:45 am]

**BILLING CODE 4810–AS–P**

**DEPARTMENT OF THE TREASURY****Submission for OMB Review;  
Comment Request**

July 26, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before August 31, 2016 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622–1295, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

**Internal Revenue Service (IRS)**

*OMB Control Number:* 1545–0016.  
*Type of Review:* Extension of a currently approved collection.  
*Title:* United States Additional Estate Tax Return.  
*Estimated Total Annual Burden Hours:* 1,678.

*OMB Control Number:* 1545–0043.  
*Type of Review:* Extension of a currently approved collection.  
*Title:* Consent of Shareholder to Include Specific Amount in Gross Income.  
*Estimated Total Annual Burden Hours:* 385.

*OMB Control Number:* 1545–0138.  
*Type of Review:* Extension of a currently approved collection.  
*Title:* U.S. Departing Alien Income Tax Statement.  
*Estimated Total Annual Burden Hours:* 17,049.

*OMB Control Number:* 1545–0212.  
*Type of Review:* Revision of a currently approved collection.  
*Title:* Application for Extension of Time to File Certain Employee Plan Returns.

*Estimated Total Annual Burden Hours:* 183,273.

*OMB Control Number:* 1545–0236.  
*Type of Review:* Extension of a currently approved collection.  
*Title:* Form 11–C—Occupational Tax and Registration Return for Wagering.  
*Form:* Form 11–C.

*Abstract:* Persons who accept taxable wagers use this form for initial registration and annual renewal, and to pay the occupational tax on wagering. Both principals and agents use this form.

*Estimated Total Annual Burden Hours:* 81,190.

*OMB Control Number:* 1545–0746.  
*Type of Review:* Revision of a currently approved collection.  
*Title:* LR–100–78 (Final) Creditability of Foreign Taxes.  
*Estimated Total Annual Burden Hours:* 41.

*OMB Control Number:* 1545–0951.  
*Type of Review:* Extension of a currently approved collection.  
*Title:* Regulations Governing the Performance of Actuarial Services under the Employee Retirement Income Security Act of 1974 (20 CFR 901).  
*Estimated Total Annual Burden Hours:* 4,200.

*OMB Control Number:* 1545–1130.  
*Type of Review:* Extension of a currently approved collection.  
*Title:* Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.  
*Estimated Total Annual Burden Hours:* 19,830.

*OMB Control Number:* 1545–1144.  
*Type of Review:* Extension of a currently approved collection.  
*Title:* Generation-Skipping Transfer Tax Return for Distributions.  
*Estimated Total Annual Burden Hours:* 980.

*OMB Control Number:* 1545–1224.  
*Type of Review:* Extension of a currently approved collection.  
*Title:* INTL–112–88 (Final) Allocation and Apportionment of Deduction for State Income Taxes.  
*Estimated Total Annual Burden Hours:* 1,000.

*OMB Control Number:* 1545–1299.  
*Type of Review:* Extension of a currently approved collection.  
*Title:* IA–54–90 (TD 8459—Final) Settlement Funds.  
*Estimated Total Annual Burden Hours:* 3,542.

*OMB Control Number:* 1545–1451.  
*Type of Review:* Extension of a currently approved collection.  
*Title:* TD 8712 (Final), Definition of Private Activity Bonds.  
*Estimated Total Annual Burden Hours:* 30,100.

*OMB Control Number:* 1545–1459.  
*Type of Review:* Revision of a currently approved collection.  
*Title:* Program Sponsor Agreement for Continuing Education for Enrolled Agents.  
*Estimated Total Annual Burden Hours:* 480.

*OMB Control Number:* 1545–1534.  
*Type of Review:* Extension of a currently approved collection.  
*Title:* REG–252936–96 (TD 8780—Final) Rewards for Information Relating to Violations of Internal Revenue Laws.

*Form:* Form 8498.

*Abstract:* Form 8498 is used to: (1) Register as a new provider of continuing educational programs being offered to IRS enrolled agents, enrolled retirement plan agents, and other tax return preparers; (2) annually renew status as an IRS-approved continuing educational provider; and (3) add new programs to an existing IRS-approved provider continuing education curriculum.

*OMB Control Number:* 1545–1555.

*Type of Review:* Extension of a currently approved collection.

*Title:* REG–115795–97 (Final) General Rules for Making and Maintaining Qualified Electing Fund Elections.

*Estimated Total Annual Burden Hours:* 623.

*OMB Control Number:* 1545–1702.

*Type of Review:* Extension of a currently approved collection.

*Title:* Information Return for Transfers Associated With Certain Personal Benefit Contracts.

*Form:* Form 8870.

*Abstract:* Charitable organizations described in Internal Revenue Code section 170(c) or charitable remainder trusts described in Internal Revenue Code section 664(d) file Form 8870 to report premiums paid after February 8, 1999, on certain life insurance, annuity, and endowment contracts (personal benefits contracts).

*Estimated Total Annual Burden Hours:* 74,200.

*OMB Control Number:* 1545–1711.

*Type of Review:* Extension of a currently approved collection.

*Title:* TD 9273—Stock Transfer Rules: Carryover of Earnings and Taxes (REG–116050–99).

*Estimated Total Annual Burden Hours:* 1,800.

*OMB Control Number:* 1545–1724.

*Type of Review:* Extension of a currently approved collection.

*Title:* REG–109481–99 (TD 9076—Final) Special Rules Under Section 417(a)(7) for Written Explanations Provided by Qualified Retirement Plans After Annuity Starting Dates.

*Estimated Total Annual Burden Hours:* 12,500.

*OMB Control Number:* 1545–1732.

*Type of Review:* Revision of a currently approved collection.

*Title:* REG–105946–00 (TD 8995—Final) Mid-Contract Change in Taxpayer.

*Estimated Total Annual Burden Hours:* 26,500.

*OMB Control Number:* 1545–1971.

*Type of Review:* Revision of a currently approved collection.

*Title:* Household Employment Taxes.  
*Form:* Schedule H (Form 1040).

*Abstract:* Schedule H (Form 1040) is used to report household employment taxes if one paid cash wages to a household employee and the wages were subject to social security, Medicare, or FUTA taxes, or if one withheld federal income tax.

*Estimated Total Annual Burden Hours:* 772,245.

*OMB Control Number:* 1545–2097.

*Type of Review:* Extension of a currently approved collection.

*Title:* Reg–111583–07(TD 9405)(Final)—Employment Tax Adjustments; REG–130074–11—Rules Relating to Additional Medicare Tax.

*Estimated Total Annual Burden Hours:* 16,900,000.

*OMB Control Number:* 1545–2102.

*Type of Review:* Extension of a currently approved collection.

*Title:* Form 13930—Central Withholding Agreement; Form 13920—Directed Withholding and Deposit Verification Form.

*Estimated Total Annual Burden Hours:* 11,900.

*OMB Control Number:* 1545–2125.

*Type of Review:* Extension of a currently approved collection.

*Title:* REG–143544–04 Regulations Enabling Elections for Certain Transaction Under Section 336(e).

*Estimated Total Annual Burden Hours:* 1,000.

*OMB Control Number:* 1545–2149.

*Type of Review:* Extension of a currently approved collection.

*Title:* TD 9278—Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Stewardship Expense.

*Estimated Total Annual Burden Hours:* 4,500.

*OMB Control Number:* 1545–2153.

*Type of Review:* Extension of a currently approved collection.

*Title:* Notice 2009–83—Credit for Carbon Dioxide Sequestration Under Section 45Q.

*Estimated Total Annual Burden Hours:* 180.

*OMB Control Number:* 1545–2154.

*Type of Review:* Extension of a currently approved collection.

*Title:* Short Form Request for Individual Tax Return Transcript.

*Estimated Total Annual Burden Hours:* 870,000.

*OMB Control Number:* 1545–2171.

*Type of Review:* Extension of a currently approved collection.

*Title:* Carryback of Consolidated Net Operating Losses to Separate Return Years (TD 9490—Final).

*Estimated Total Annual Burden Hours:* 1,000.

*OMB Control Number:* 1545–2186.

*Type of Review:* Revision of a currently approved collection.

*Title:* Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options.

*Estimated Total Annual Burden Hours:* 694,750.

*OMB Control Number:* 1545–2235.

*Type of Review:* Extension of a currently approved collection.

*Title:* Form 14417—Reimbursable Agreement-Non-Federal Entities; Form 14417–A—Statistics of Income—User Fee.

*Estimated Total Annual Burden Hours:* 160.

*OMB Control Number:* 1545–2237.

*Type of Review:* Extension of a currently approved collection.

*Title:* RP–141793–11 (Rev. Proc. 2014–49).

*Abstract:* Revenue Procedure 2014–49 provides temporary relief from certain requirements of § 42 of the Internal Revenue Code for agencies and owners, in the context of a major disaster. It also provides emergency housing relief for individuals who are displaced by a major disaster from their principal residences in certain major disaster areas.

*Estimated Total Annual Burden Hours:* 1,750.

**Brenda Simms,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2016–18046 Filed 7–29–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

July 26, 2016.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before August 31, 2016 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and

(2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

**FOR FURTHER INFORMATION CONTACT:**

Copies of the submission may be obtained by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622-1295, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

**Departmental Offices**

*OMB Control Number:* 1505-0250.

*Type of Review:* Revision of a currently approved collection.

*Title:* Application, Reports, and Recordkeeping for the Direct Component and the Centers of Excellence Research Grants Program under the RESTORE Act.

*Abstract:* The Department of the Treasury administers the Direct Component and the Centers of Excellence Research Grants Program authorized under the RESTORE Act. Treasury awards grants for these two programs from proceeds in connection with administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act relating to the Deepwater Horizon Oil Spill, and deposited into the Gulf Coast Restoration Trust Fund. Direct Component grants are awarded to the States of Alabama, Louisiana, Mississippi, and Texas, and 23 Florida counties and 20 Louisiana parishes and Centers of Excellence grants are awarded to the States of Alabama, Florida, Louisiana, Mississippi, and Texas. The information collection for both programs identifies the eligible recipients; describes proposed activities; determines an appropriate amount of funding; ensures compliance with the RESTORE Act, Treasury's regulations, and Federal laws and policies on grants; tracks grantee progress; and reports on the effectiveness of the programs.

*Affected Public:* State, local, or tribal governments.

*Estimated Total Annual Burden Hours:* 6,142.

**Brenda Simms,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2016-18130 Filed 7-29-16; 8:45 am]

**BILLING CODE 4810-25-P**

**DEPARTMENT OF VETERANS AFFAIRS**

[OMB Control No. 2900-0036]

**Agency Information Collection (Statement of Disappearance, VA Form 21P-1775) Activity Under OMB Review**

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 31, 2016.

**ADDRESSES:** Submit written comments on the collection of information through [www.Regulations.gov](http://www.Regulations.gov), or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). Please refer to "OMB Control No. 2900-0036" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7474 or email [cynthia.harvey-pryor@va.gov](mailto:cynthia.harvey-pryor@va.gov). Please refer to "OMB Control No. 2900-0036."

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement of Disappearance, VA Form 21P-1775.

*OMB Control Number:* 2900-0036.

*Type of Review:* Extension without change of a currently approved collection.

*Abstract:* The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services, established by law, for veterans, service personnel and their survivors. 38 U.S.C. 108 requires a formal "presumption of death" when a veteran has been missing for seven years. Entitlement to death benefits cannot be determined in these cases until VA has made a decision of presumption of death.

VA Form 21P-1775 is used to gather the necessary information to determine if a decision of presumptive death can be made for benefit payment purposes. It would be impossible to administer the survivor benefits program without this collection of information.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 28 hours.

*Estimated Average Burden per*

*Respondent:* 2 hours and 45 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 10.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2016-18098 Filed 7-29-16; 8:45 am]

**BILLING CODE 8320-01-P**

**DEPARTMENT OF VETERANS AFFAIRS**

[OMB Control No. 2900-0261]

**Agency Information Collection (Application of Refund of Educational Contributions) Activity Under OMB Review**

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 31, 2016.

**ADDRESSES:** Submit written comments on the collection of information through [www.Regulations.gov](http://www.Regulations.gov), or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). Please refer to "OMB Control No. 2900-0261" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont

Avenue NW., Washington, DC 20420, (202) 461-5870 or email *cynthia.harvey-pryor@va.gov*. Please refer to “OMB Control No. 2900-0261”

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Refund of Educational Contributions, VA Form 22-5281.

*OMB Control Number:* 2900-0261.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Veterans and Service members complete VA Form 22-5281 to request a refund of their contributions to the Post-Vietnam Veterans Education Program. Contributions made into the Post-Vietnam Veterans Education Program may be refunded only after the participant has disenrolled from the program. Request for refund of

contribution prior to discharge or release from active duty will be refunded on the date of the participant's discharge or release from active duty or within 60 days of receipt of notice by the Secretary of the participant's discharge or disenrollment. Refunds may be made earlier in instances of hardship or other good reasons. Participants who stop their enrollment from the program after discharge or release from active duty, contributions will be refunded within 60 days of the receipt of their application.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register**

Notice with a 60-day comment period soliciting comments on this collection of information was published at 81 FR 11051 on May 11, 2016.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 77 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 461.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2016-18097 Filed 7-29-16; 8:45 am]

**BILLING CODE 8320-01-P**

# Reader Aids

Federal Register

Vol. 81, No. 147

Monday, August 1, 2016

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## CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## FEDERAL REGISTER PAGES AND DATE, AUGUST

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**LIST OF PUBLIC LAWS**

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**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List July 27, 2016

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## TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 2016

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
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